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ABSTRACT

Statutory laws, case laws, and model laws have been provided in this report as a basis for comparing Mississippi's juvenile laws with other juvenile laws. Since legislation concerning juvenile courts is vast, complete legislation is only provided for the State of Mississippi and two model juvenile court acts. Discussion, however, is provided which depicts the status of legislation of other States concerning certain areas of juvenile court law which appear to be of concern to many State legislators. The areas of concern discussed include right to counsel, admissibility of statements, right to trial by jury, right to pretrial release, fingerprinting, publicity of juvenile proceedings, inspection of juvenile records, and expungement of juvenile records. Mississippi case law and other case law are also discussed, and recommendations for legislative action presented. (Author/JF)

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AN ANALYSIS OF JUVENILE COURT LAWS IN MISSISSIPPI

BY

Walter S. Carter, III

This paper is one of a series sponsored by the Governor's Office of Education and Training. Special thanks must go to Governor William Waller and Dr. Milton Baxter, Executive Director of the Governor's Office of Education and Training, for providing the support for the research and writing that have gone into these papers.

Each of the papers in this series is designed to speak to the following questions: (1) What is the statutory law in Mississippi on the subject, if any? (2) What is the statutory law in approximately five other states on the same subject? (3) What major cases, if any, have been in courts in Mississippi? (4) In very general terms, what is the status of the case law on the subject elsewhere? (5) What model legislation, if any, has been proposed or what recommendations for legislative action, if any, have been proposed by various agencies? (6) What recommendations seem to follow from the information presented in the answers to questions 1-5?

The author wishes to acknowledge the assistance in developing this paper of Dr. Columbus B. Hopper, Professor of Sociology, University of Mississippi; Charles Newell, Assistant to the Chief, Jackson Police Department; and Thomas C. Collier, a student of the School of Law, University of Mississippi.

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INTRODUCTION

The development of the juvenile court system was motivated by a deep humanitarian concern for children in trouble. Early advocates of the juvenile court system believed that children who violated the law were victims of their environment and were in need of help rather than punishment which they received in criminal courts.[1] Early reformers of the court system believed

> that the social sciences had progressed to such a degree that rehabilitation of wayward youth by proper therapy was almost a certai[illegible] . . . [and] that the necessary resources for rehabi[illegible]n would be provided. This did not materialize or turned out to be illusory. It became obvious that what was to be a court of protection had turned into a court of oppression.[2]

Institutions for committing children have been facilities of punishment -- not rehabilitation. Thus, the adjudication of delinquency in the juvenile courts has resulted in a real loss of freedom for the child, a loss not originally intended.[3]

Since their creation, juvenile courts have been courts with multiple functions. One function has been that of "adjudicating delinquency of a child for conduct, which, for an adult, would be subject to criminal law and prescribing treatment for him."[4] A separate function of the juvenile court has been "judicial intervention for the case of neglected children and for the treatment and rehabilitation of delinquent children whose conduct would not have constituted a violation of the criminal law for an adult."[5] In Kent vs United States, 383 U.S. 1541 (1966), In re Gault, 387

U.S. 1 (1967), In re Winship, 397 U.S. 358 (1970), and McKeiver vs Pennsylvania, 403 U.S. 528 (1971) the Supreme Court defined some of the due process requirements[6] in situations where "the juvenile court is adjudicating conduct which, for an adult, would be a criminal act and in disposing of a child adjudicated to be guilty of such conduct."[7]

Legislation in other states concerning juvenile courts is vast. Therefore, complete youth court legislation is provided in this report only for the state of Mississippi and for the two model Juvenile Court Acts which are included. Discussion, however, is provided which depicts the status of legislation of other states concerning certain areas of juvenile court law which appear to be of concern to many state legislatures.[8]

Two recent Supreme Court decisions were delivered in December, 1973, concerning search and seizure. The rulings involve criminal court cases and their implications for juvenile courts, if any, have not yet been determined. It appears, however, that any change in procedures that affects criminal courts will in turn affect certain aspects of juvenile court procedures.[10] The two opinions delivered in December, 1973 were U.S. v. Robinson and Gustafson v. Florida. In effect these two cases provide that evidence, [Heroin and Marijuana], discovered during the full search of a traffic offender is admissible since law enforcement officer's authority to make full search incident to lawful custodial arrest requires no justification beyond fact of arrest itself.[11]

STATUTORY LAW IN MISSISSIPPI

The sections of the Mississippi Code Annotated, 1972, which concern Youth Courts are given below. There are also statutes in the Mississippi Code which are not provided in this report pertaining to an "Interstate Compact on Juveniles."[12] The policy of the state in adopting the interstate compact on juveniles is "to cooperate fully with other states: (1) in returning juveniles to such other states whenever their return is sought; and (2) in accepting the return of juveniles whenever a juvenile residing in the state is found or apprehended in another state and in taking all measures to initiate proceedings for return of such juveniles."[13]

TITLE 43

PUBLIC WELFARE

CHAPTER 21

Youth Court

§ 43-21-1. Citation of chapter.

This chapter may be cited as the "Youth Court Law."

§ 43-21-3. Establishment clause.

A youth court division is hereby created as a part of the county court of each county now or hereafter having a county court, and a youth court division is hereby created as a part of the chancery court of each county in which no county court is maintained.

§ 43-21-5. Definitions.

(a) "The court" means the youth court division.

(b) "The judge" means the judge of the youth court division.

(c) "Child" and "youth" are synonymous and each means a person who is less than eighteen years of age.

(d) "Custodian" means any person having the present care or custody of a child as defined by this chapter, whether such person be parent or otherwise.

(e) "Guardian" means the legally appointed guardian of the person of a child as defined by this chapter.

(f) "Parent" means the father or mother to whom a child has been born, or the father or mother by whom the child has been legally adopted.

(g) "Delinquent child" is synonymous with the meaning of what is commonly called a juvenile offender, and means any child not less than ten years of age who occupation, behavior, environment or associations are injurious to his welfare or the welfare of other children; or who deserts his home; or who is habitually disobedient to or beyond the control of his parents, guardian or custodian; or who being required to attend school wilfully violates rules thereof, or wilfully absents himself therefrom; or who violates any state law or municipal ordinance; or who, by reason of being habitually wayward or habitually disobedient, becomes an incorrigible or uncontrollable child; or who so deports himself to injure or endanger the morals or health of himself or any other person.

(h) "Neglected child" means a child whose parent, guardian or custodian, or any person legally responsible for his care or support, neglects or refuses when able so to do, to provide for him proper or necessary care or support, or education as required by law, or medical, surgical or other care necessary for his well-being; or who is otherwise without proper care, custody, supervision or support; or who, for any reason, and as the result of the faults or habits of anyone, lacks the special care made necessary for him by reason of his mental condition, whether said condition be mentally defective or mentally disordered; or who, for any reason, and as the results of the faults or habits of anyone, lacks the care necessary for his health, morals or well-being; or who is found in a disreputable place, or who associates with vagrant, vicious, or immoral persons.

No child who in good faith is under treatment by spiritual means alone through prayer in accordance with the tenets and practice of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for this reason alone, by considered to be medically neglected under any provision of this chapter.

(i) "Battered child" means a child whose parent, guardian or custodian, or any person legally responsible for his care or support has inflicted serious physical injury or injuries other than by accidental means upon him as a result of abuse or neglect.

(j) The singular includes the plural, the plural the singular, and the masculine the feminine when consistent with the intent of this chapter.

§ 43-21-7. Jurisdiction.

Except as otherwise provided in this chapter, the court shall have exclusive original juridsiction in all proceedings concerning any delinquent, neglected or battered child residing or being in the county.

Nothing herein shall prevent the prosecution of any child, youth or minor after July 1, 1971, for any offense committed prior to said date for the offenses hereby repealed. Any youth subject to the youth court jurisdiction shall be entitled to be released on bond subject to appeal to the state supreme court, the amount of said bond to be determined by the presiding youth court judge.

§ 43-21-9. Retention of jurisdiction.

When jurisdiction shall have been obtained by the court in the case of any child, jurisdiction of such person as well as of any offenses by him committed may be retained or resumed by the court until he becomes twenty years of age. However, this section shall not exclude jurisdiction by the proper court of any other county should the said child be outside the territorial jurisdiction of the court so retaining jurisdiction.

§ 43-21-11. How proceedings instituted.

Whenever any person informs the youth court that a child residing or being within the county is within the purview of this chapter, the court may, in its discretion, make a preliminary inquiry to determine whether the interest of the child or the public requires the court to take further action. At any time thereafter, the court may order the public welfare department, any successor agency, or any other suitable public employee to make a social investigation concerning the child and present the findings thereof to the court. Thereupon, the court may make an informal adjustment for the best interest of the child, with or without a petition, or may authorize a petition to be filed by a reputable person with the clerk or the youth court; provided, however, that no child may be permanently taken from the custody of its natural parent or parents or the person legally in custody of said child except by hearing upon a petition as herein provided; and that in urgent and necessitous circumstances the state department of public welfare may take a child from the custody of its parent or parents or the person legally in custody of said child and place it with some institution, foster home or other agency within the county, but the state department of public welfare must immediately file with the court a written report of the circumstances surrounding the taking of the child and file a petition as herein provided within five (5) days of the taking of the child and such petition shall be heard as soon as practicable and shall be a preference case, but in any event a hearing shall be held not later than ten (10) days from the filing of the petition; and, that a child's parent or parents or the person legally in custody of a child may enter into voluntary written custodial agreements with the state department of public welfare for the temporary custody of their child or children. Any such written agreement shall be immediately filed with the court and either approved, disapproved or modified by the judge and the court shall be notified in writing as to the whereabouts of the child at all times.

Nothing in this section shall be construed as modifying or changing the adoption laws of this state.

The proceedings shall be entitled "In the interest of __________, a child."

The petition shall set forth:

(a) The name, age, sex, race and residence of the child.

(b) the name and residence of his parents or guardian, if known, and if not known, stating such fact.

(c) The name and residence of the person having custody or control of the child, if such person be not a parent or guardian.

(d) The facts which bring the child within the purview of this chapter.

If any of the facts herein required are not known by the petitioner, the petition shall so state. The petition shall be verified by affidavit of the petitioner, and such certification may be made upon information and belief.

Any licensed doctor of medicine, licensed doctor of denistry, intern, resident, or registered nurse having reasonable cause to suspect that a child brought to him or coming before him for examination, care or treatment is a battered child shall cause an oral report to be made immediately by telephone or otherwise, and followed as soon thereafter as possible by a report in writing, to the person designated by the judge of the county youth court or family court and to the county welfare department; when the attendance of a physician, dentist, intern, resident, or registered nurse is pursuant to the performance of services as a member of the staff of a hospital or similar institution, he shall notify the person in charge of the institution or his designated delegate, who shall report or cause a report to be made regarding said child. Such report shall contain the names and addresses of the child and his parents or other persons responsible for his care, if known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, and any other information that might be helpful in establishing the cause of the injury and the identity of the perpetrator.

Any licensed doctor of medicine, licensed doctor of dentistry, intern, resident, registered nurse, or hospital participating in the making of a report pursuant to this chapter or participating in the judicial proceeding resulting therefrom shall be presumed to be acting in good faith and in so doing shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed.

§ 43-21-13. Summons; services or summons; notice; custody and detention.

After the filing of such petition, and after such further investigation as the court may direct, unless voluntary appearance be made as hereinafter set forth, the judge shall fix a date and designate a place for the hearing of the case concerning said child, and shall order the clerk of the court to issue summons to the person having the custody or control of the child, requiring such person to appear personally and bring the child before the court at the time and place stated, and to then and there show cause, if any can be shown, why said child should not be adjudged a delinquent or neglected or battered child; and if the person so summoned shall be other than one of the parents or the guardian of the child, then such summons shall also issue to and be served upon one of the parents or guardian of said child if one of the parents or guardian resides within the state and can, by diligent search and inquiry, be located therein. Personal summons shall likewise be issued to and served upon said child in the same manner as is now required by law for the service of summons on an adult.

Summons shall be served not less than three days before the date set for the hearing of the proceedings concerning said child, unless service of summons be waived by voluntary appearance before the date set for the hearing, the court may, in tis discretion, proceed to a hearing at any time after said petition has been filed, regardless of the date set for the hearing. In case a parent or guardian of such child, or the custodian of such child, if a parent or guardian cannot be located, appear before the court with the child without the service of summons on either of them, including the child, or being present in court with the child after service of summons on either of them, and make no objection to the process or lack of process, the court shall have the right to proceed to the hearing of the case the same as if summons had been served on each of them; and any irregularities in the issuance or service of process on either of them shall not deprive the court of jurisdiction of the child and the right to proceed to a hearing.

In case it shall appear that neither a parent, nor guardian, nor custodian resides within the state or cannot be located therein, the clerk shall, not less than ten days before the date set for the hearing, mail a written notice, by registered mail, to the parent, guardian, or custodian whose name and post-office address can be ascertained, advising him of the time and place of the hearing, and shall note such fact upon the court docket; and if no appearance be made inrresponse to such notice, then ten days after such notice has been mailed, the court may take jurisdiction of the child the same as if summons had been personally served as herein provided, and may then proceed to a hearing and disposition of the case.

Summons may be issued requiring the appearance for any other person whose presence, in the opinion of the judge, is necessary in any proceeding. The summons shall be directed to any lawful officer of the county authorized to serve same, and the service of summons required by this chapter may be made by a youth counselor or any other suitable person at the direction of the court. If it appears from the petition, or otherwise, that the child is in such condition or surroundings that his welfare requires that his custody be immediately assumed by the court, the judge may cause to be entered or endorsed upon the summons an order that the officer serving same at once take the child into custody; but no child shall be detained unless, in the opinion of the judge, it shall be necessary to insure protection of the child, or necessary for the protection of other children, or to insure his attendance in court at such time as it shall be required. In order to avoid such detention, the officer, shall, unless it is impracticable, or has been otherwise ordered by the court, accept the promise of the parents or parent, guardian or custodian of the child, to be responsible for the personal presence of such child at the court at the time and place fixed by the court. If not so released, such child shall be placed in custody of a person designated by the court, or taken immediately to the court, or to the place of detention designated by the summons; and the officer taking the child shall immediately notify the court of his possession or disposition of the child.

Pending the hearing and final disposition of the case, the court may arrange for the temporary detention of the child with any public or private institution or agency caring for children, or may request the state department of public welfare to arrange for the care of said child.

No child shall be placed in or committed to any jail or other place of detention of adults unless, in the opinion of the court, he be a child whose habits or conduct are deemed such as to constitute a menace to other persons, or it is necessary to insure the attendance of such child at court; but he shall not be placed in a room or ward with adults. Any county or municipality may separately or jointly establish and maintain a suitable detention home or detention room for children awaiting hearings under the provisions of this chapter; for said purpose the county or municipality may acquire the necessary land by purchase or donation, and may expend the necessary funds out of its general fund to build and maintain same.

§ 43-21-15. Warrant for failure to obey summons.

If any person summoned as herein provided shall, without reasonable cause (the judge to determine what is reasonable cause), fail to appear, he may be proceeded against for contempt of court. In case the summons cannot be served, or the parties served with summons fail to obey the same, or in any case when it shall be made to appear to the court that the service of summons will be ineffectual, or the welfare of a child requires that he shall be brought forthwith into the custody of the court, a warrant may be issued against the parent, parents, guardian or custodian, or against the child himself.

§ 43-21-17. Hearing; legal counsel.

The youth court shall at all times be deemed in session for the purpose of disposing of cases under this chapter, and all cases of children shall be heard separately from the trial of cases against adults, and at any place which the judge deems suitable, and without jury; and the adjudicatory hearing shall be conducted under such rules of evidence as may comply with applicable constitutional standards; and the judge may continue the cause or adjourn the hearing from time to time. No proceedings by the court shall be a criminal proceeding, but shall be entirely of a civil nature concerned with the care, protection, and rehabilitation of the child in question. The general public shall be excluded from the hearing, and only such persons shall be admitted as have a direct interest therein or who have been subpoenaed as witnesses therein.

It shall be the duty of the county attorney or the district attorney to appear in all such proceedings and present the petition at the hearing, if directed or ordered by the court so to do.

Any person interested in any case shall have the right to appear therein and be represented by legal counsel of his own choosing and at his own expense.

It shall be the duty of the county prosecuting attorney to manage the caseload of this forum.

§ 43-21-19. Adjudication; placement; status of child; disclosure of information from records of youthful offender; publication of names.

If the court finds that the child is neglected or delinquent or battered within the provisions of this chapter, it shall so adjudge and decree, and may, by order duly entered, proceed as follows: (1) Place the child under supervision in his own home or in the care of a relative, under such terms as the court shall determine and direct; or (2) place the child in a suitable family home, or commit him to the custody of a suitable private institution or agency able and willing to receive him; or if adjudged delinquent, may commit the child to the custody of a state-supported training school. No child who is under ten years of age or is not under eighteen years of age shall be committed to a state training school. Where further custody is deemed necessary by the court for the welfare of the said child, such state training school may retain custody of said child until he has attained his 20th birthday, but for no longer. The superintendent of such institution, under such rules and regulations as the trustees thereof shall prescribe, may discipline any child so committed and may parole him at any time he may deem it to be to the best interest and welfare of said child.

No decree or order of adjudication concerning any child shall recite any of the facts or circumstances upon which such adjudication is based, nor shall it recite that a child has been found guilty; but it shall only recite that said child is found to be a delinquent child or a neglected or a battered child as the case may be.

In all cases, after the adjudication thereof, whenever it may appear for the best interest of said child so to do, and after an investigation concerning said child has been made, and subject to such conditions and supervision as the court may order, the court may change the custody of said child, or may dismiss the petition, or may terminate its jurisdiction over said child. Any institution or agency to which a child has been committed shall give to the court such information concerning such child as the court may at any time require, and may make recommendations to the court concerning such child.

No adjudication upon the status of any child shall operate to impose any of the civil disabilities ordinarily imposed by conviction of adults, nor shall any child be deemed a criminal by reason of such adjudication, nor shall such adjudication be deemed a conviction. The disposition of a child or any evidence given in the court in any proceedings concerning him shall not be admissible against the child in any case or proceeding in any other court. However, any such records, including names, shall be made available to any office or agency of the State of Mississippi or any subdivision thereof upon the request of such agency or subdivision. When any child for the second time or more shall be adjudged to be a delinquent child, his name and the name of his parents or the persons in whose custody he lives shall thereupon be published in a newspaper having a general circulation in the county of said child's residence, along with the fact of such adjudication.

§ 43-21-21. Support of child committed to a custodial agency.

Whenever a child is committed by the court to the custody of any person or agency other than that of a parent, guardian, or a state training or reform school, the court may, after giving such parent or guardian a reasonable opportunity to be heard, adjudge that such parent or guardian shall pay, upon such terms and conditions as the court may direct, such sum or sums as will cover, in whole, or in part, the support of such child; and if such parent or guardian shall wilfully fail or refuse to pay such sum, they may be proceeded against for contempt of court as provided in this chapter.

§43-21-23. Medical examination; transcript of records, conveyance to institutions.

The court may cause any child coming within its jurisdiction to have a physical and mental examination made. It shall be the duty of the court committing any child to any institution or agency to transmit with the order of commitment a carefully prepared transcript of the proceedings, social investigation, medical report, concerning said child, so as to aid the officials of the institution or agency in better understanding and classifying the child. If said medical examination discloses that any child is tubercular, feebleminded or insane, such child shall not be committed to any state institution for delinquent or neglected children, but shall be committed in the manner provided by law to the particular state institution for such disabilities or infirmities.

The cost of conveying any child committed to any institution or agency shall be paid by the county from which such child is committed out of the general treasury of the county, upon approval of the court. No compensation shall be allowed beyond the actual and necessary expenses of the child and the person conveying it. In the case of a girl, the court shall designate some suitable woman to accompany her to said institution or agency.

§ 43-21-25. Contributing to delinquency or neglect or violating order of court or provisions of chapter; contempt; punishment.

In all cases where the child is found to be a neglected or delinquent or battered child, as defined in this chapter, the parent or parents, or guardian, or person or persons having the custody of such child, or any other person, who, by any act or acts of wilful commission or omission, is found by the court to be encouraging, causing or contributing to the neglect or delinquency or battering of such child, may be required by the court to do or omit to do any act or acts which the judge may deem reasonable and necessary for the welfare of such child. Failure to comply with such requirements shall be contempt of court, and punished as such; and any person who wilfully violates, neglects or refuses to obey or perform any order of the court shall be in contempt of court and punished as such. Any person found in contempt of the court for failure to obey or fulfill any of the provisions of this chapter, or any order of the court, shall be punished by a fine not to exceed five hundred dollars ($500.00), or by imprisonment in jail not to exceed ninety days, or by both such fine and imprisonment. Nothing contained in this section shall prevent proceedings against such parent, or parents, or guardian, or any other person hereinabove set out, under any statute of this state or any municipal ordinance defining any act as a crime or misdemeanor.

§ 43-21-27. Contributing to the neglect or delinquency of child made a misdemeanor; felonious battery of a child.

(a) Any parent, guardian or any other person who willfully commits any act or omits the performance of any duty, which act or omission contributes to or tends to contribute to the neglect or delinquency of any child, or which act or omission results in the battering of any child, as defined in this chaper, or who knowingly aids any child in escaping or absenting himself from the guardianship or custody of any person, agency or institution, or knowingly harbors or conceals, or aids in harboring or concealing any child who has absented himself without permission from the guardianship or custody of any person, agency or institution to which such child shall have been committed by the court shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not to exceed five hundred dollars ($500.00), or by imprisonment not to exceed six (6) months in jail, or by both such fine and imprisonment.

(b) Any person who shall, from premeditated design, beat, whip, strike, burn, torture, or otherwise abuse or mutilate any child under thirteen (13) years of age, with or without intent to kill such child, and where such abuse or mutilation results in the fracture of any bone, the mutilation, disfigurement or destruction of any part of the body of such child, shall be guilty of felonious battery of a child, and upon conviction may be punished by imprisonment in the penitentary for not more than twenty (20) years.

(c) The judge shall report any suspected violation of subsection (b) of this section to the grand jury as soon as possible after such suspected violation comes to his attention. Such report shall contain a full and detailed account relating to such occurrence, including any pertinent medical records.

(d) Nothing contained in this section shall prevent proceedings against such parent, guardian or other person under any statute of this state or any municipal ordinance defining any act as a crime or misdemeanor. Nothing in the provisions of this chapter shall preclude a father, mother or guardian of any child from having a right to trial by jury when charged with having violated the provisions of this section.

(e) In any proceeding resulting from a report made pursuant to this chapter, the testimony of the physician making the said report shall not be excluded on the ground that such physician's testimony violates the physician-patient privilege or similar privilege or rule against disclosure. The physician's report shall not be considered as evidence unless introduced as an exhibit to his testimony.

(f) Any criminal prosection arising from a violation of this section shall be tried in the circuit, county or justice court having jurisdiction; provided, however, that nothing herein shall abridge or dilute the contempt powers of the youth court.

§ 43-21-29. Referees.

In any county in which the chancery court serves as the youth court, the judge of the chancery court may appoint the chancery clerk or other suitable person to act as a regular or special referee in cases concerning children within the jurisdiction of the court, and a regular referee shall hold office until removed by the court. All cases coming within the purview of this chapter may be initiated before and heard by and adjudicated by a referee in the manner provided for initiating and hearing and adjudicating cases by the court, and the adjudication and order of said referee shall stand as the adjudication and order of the court unless modified or set aside by the judge of the court. No child shall be committed by a referee to any public or private institution until the order therefor is approved and signed by the judge.

A regular referee may permit the handling of certain cases by a justice of the peace or municipal court in the same manner as is provided in this chapter for the youth court to permit.

All orders or decrees made by a referee shall be approved or disapproved by the youth court judge in term time of chancery court in the same manner as is now provided by law for the approval of vacation orders by a chancery clerk.

The salary for the referee shall be fixed on order of the chancellor of the said chancery court district, conditioned upon the approval of the board of supervisors, in an amount not to exceed the following:

Class 1 counties	$1200.00
Class 2 counties	1000.00
Class 3 counties	750.00
Class 4,5 and 6 counties	500.00

and shall be paid by the county from the general county fund by the board of supervisors on order of the chancellor of the said chancery court district.

Provided, however, the board of supervisors of any county wherein U.S. Highways 49W and 82 intersect and having a land area of six hundred ninety-three (693) square miles is hereby authorized, in its discretion, by appropriate order on its minutes, to increase the salary of the youth court referee to an amount not to exceed three thousand dollars ($3,000.00) annually.

Upon request of the board of supervisors of two (2) or more counties, the judge of the chancery court may appoint a suitable person as referee to serve two (2) or more counties within his district, and the payment of salary may be divided in such ratio as may be agreed upon.

§ 43-21-31. Transfer of felony cases to other courts; exclusive jurisdiction of certain cases given to circuit court.

If a child thirteen years of age or older is charged with an offense which would be a felony if committed by an adult, the court, after full investigation, may, in its discretion, retain jurisdiction and proceed with the case as a delinquency case, or certify such child for proper criminal proceedings to any court which would have trial jurisdiction of such an offense if committed by an adult, and may fix the amount of bail, except that the circuit court shall have exclusive jurisdiction of such child if he be charged with any crime which, upon conviction, is punishable by life imprisonment or death.

§ 43-21-33. Transfer of criminal cases from other courts unless prosecution permitted by youth court.

Whenever any child thirteen (13) years of age or older is brought before any justice of the peace court or municipal court charged with the commission of a crime under a state law or municipal ordinance, such court shall, unless prosecution is permitted by order of the youth court, transfer the case to the youth court of the county, to be dealt with as a case of delinquency in accordance with the provisions of this chapter, and all papers and other documents pertaining to the case shall be transmitted to the clerk of the youth court; and any arrest docket entries or other matters of record shall be thoroughly expunged from the records so that no record other than that of the youth court remains; and in any such case the youth court may hear and proceed with the case in the same manner as if the child has been brought before the court upon information originally presented as herein provided. In such cases, the justice of peace court or municipal court shall have power to enforce the provisions of this chapter with regard to contributing to delinquency or neglect or battering of a child in the same manner as the youth court has power to enforce. In cases where the child is charged with a traffic violation whether the same be a state law or a municipal ordinance, the justice of the peace court or the municipal court, as the case may be, may proceed to dispose of the same in the same manner as for other offenders and it shallnot be necessary to transfer the case to the youth court of the county. If the said child be a habitual offender, the youth court shall have the power by its own motion to take jurisdiction thereof and proceed therewith as a case of delinquency in accordance with the provisions of this chapter.

After conviction and sentence of any child so prosecuted for a misdemeanor, as above set out, by a justice of the peace or municipal court, the youth court of the county shall have full power to stay the execution of such sentence and to release such child on good behavior, or other such order as the court may see fit to make.

§ 43-21-35. No child under thirteen years of age to be prosecuted criminally.

No child under thirteen years of age shall be prosecuted criminally for a misdemeanor or a felony, but such case must be handled by the youth court.

§ 43-21-37. Charge to grand jury.

The circuit court judge shall charge the grand jury and assembled officers with respect to the purpose and provisions of this chapter.

§ 43-21-39. Circuit court's discretion concerning cases.

If any child shall be convicted by any circuit court as provided under this chapter, the trial judge, if he deems it for the best interest of such child and the public welfare, may, in his discretion, and in lieu of other statutory punishment, commit such child to any state institution now or hereafter established for delinquents, or may commit such child to the county jail for any term not in excess of one year, or he may suspend sentence and release on probation, under such terms and conditions as he may prescribe, and said court shall have the power to change the custody of such child or to terminate its jurisdiction over said child in the same manner as is provided in this chapter for the youth court. Said circuit judge may before or during or after said trial remand said cause to the youth court for further proceedings therein or handling thereof.

§ 43-21-41. Youth court; records; clerk.

The proceedings and orders of the court shall be entered in a book to be kept for that purpose known as the "youth court record;" and the court when handling and disposing of cases under this chapter shall be called the "youth court'" and the clerk of the court, when acting with reference to any matters under this chapter, shall be called the "youth court clerk."

Between the first day of January and the fifteenth day of February of each year the clerk of the youth court shall record for the preceding year, upon forms to be furnished by the state department of public welfare, the number and disposition of all cases together with such other useful information regarding such cases as may be requested and is obtainable from the records; and such completed forms shall be forwarded to the state department of public welfare for its use. When such records are requested for statistical purposes, the names or identity of such children shall not be disclosed from the reports or records so furnished.

§ 43-21-43. Youth counsellors.

With the approval of the board of supervisors, the judge of the youth court may in any county in which he has jurisdiction appoint one or more persons from an eligible list furnished by the state merit system created under section 43-1-5, to serve as youth counsellor in said county, and whose employment and salary shall be in accordance with rules and regulations established by said merit system, and said counsellor shall be paid by the county upon allowance by the board of supervisors.

The judge of the youth court may in any county in which he has jurisdiction, in lieu of or in addition to the aforementioned youth counsellors, designate that the county department of public welfare shall furnish the youth counsellor or counsellors for said court.

With the approval of the municipal authorities of any municipality, the youth court judge may appoint one or more youth counsellors for said municipality to serve within said municipality, and to be paid out of said municipal treasure; the qualifications, employment and salary of any such youth counsellor to be the same as provided for a county youth counsellor. A youth counsellor may be appointed to act for both a municipality and the county, and the payment of salary may be divided in such ratio as may be agreed upon.

The youth counsellor shall perform such services as may be required by the court to carry out the purposes and provisions of this chapter, and may utilize the technical services available through the state department of public welfare.

Any probation officer now serving may be eligible for reappointment as a youth counsellor.

§ 43-21-45. Salaries and expenses of youth counsellors and clerk-reporter; tax levy in certain counties.

(1) In any class 1 county having a total population in excess of eighty thousand according to the 1950 census and having a total assessed valuation in excess of forty-eight million dollars, and in which there is both a youth court and a federal military base or encampment; and in any class 1 county having a total population in excess of fifty-two thousand seven hundred twenty in the 1960 federal decennial census and in which there is located

both a state-supported university and a Mississippi National Guard Camp, the board of supervisors of any such county may, in its discretion, levy a special tax upon all the taxable property of the county, not exceeding three-fifths of one mill per annum, to be used in the payment of salaries and/or travel expenses of a youth counsellor, or counsellors, and the salary of a clerk-reporter of the youth court of such county, and such funds shall be expended for no other purpose.

(2) The county shall not be reimbursed for the amount of any such levy provided by subsection (1) of this section under the terms of the homestead exemption law, and such ad valorem levy shall not be included in or become a part of the county levy for general funds.

§43-21-47. Cooperation.

It is hereby made the duty of every public official or department to render all assistance and cooperation within his or its jurisdictional power which may further the objects of this chapter. The court is authorized to seek the cooperation of all societies or organizations or agencies having for their object the protection or aid of children.

§ 43-21-49. Court costs and fees.

In proceedings under this chapter, no court costs shall be charged against any party to a petition, and no salaried officer of the state or the county or of any municipality therein, nor any youth counsellor, nor any witness, shall be entitled to receive any fee for any service rendered to the court or for attendance in court in any proceedings under this chapter; but the fees of the circuit and chancery clerks in youth court cases originating by petition shall be paid as is provided by law for like services in other cases, and shall be paid by the county on allowance of the board of supervisors on intemized cost bill approved by the judge. Said costs shall be paid out of the general fund. No clerk shall be allowed compensation for attendance on said youth court.

§ 43-21-51. Appeals.

The court to which appeals may be taken from orders or decrees of the youth court shall be the supreme court of Mississippi. In any case wherein an appeal is desired written notice of intention to appeal shall be given to the youth court within ten days after the entry of the order or decree to be appealed from, and bond for costs in an amount of not less than one hundred dollars, in the discretion of the court as to whether said bond shall be in excess of one hundred dollars, and approved by the youth court, shall be given within said period of time.

The pendency of an appeal shall not suspend the order or decree of the youth court regarding a child, nor shall it discharge the child from the custody of that court or of the person, institution or agency to whose care such child shall have been committed, unless the youth court or supreme court shall so order. If the supreme court does not dismiss the proceedings and discharge the child, it shall affirm or modify or reverse the order of the youth court and remand the child to the jurisdiction of that court for placement and supervision in accordance with its order, and thereafter the child shall be and remain under the jurisdiction of the youth court in the same manner as if such court had made said order without an appeal having been taken.

In counties now or hereafter having county courts, the appeal shall be to the chancery court from which court appeal may be prosecuted to the supreme court in the manner above provided.

§ 43-21-53. Chancery court jurisdiction not abridged.

Nothing herein contained shall be construed as abridging the power and jurisdiction of the chancery court of the State of Mississippi, exercised over the estates of minors, nor as an abridgment of the power and authority of said chancery courts or the chancellor in vacation, or clerk in vacation to appoint guardians for minors.

§43-21-55. Construction and purpose of this chapter.

This chapter shall be liberally construed to the end that each child coming within the jurisdiction of the court shall receive such care, guidance and control, preferably in his own home, as will conduce to the child's welfare and the best interest of the state, and that when such child is removed from the control of his parents the court shall secure for him care as nearly as possible equivalent to that which should have been given him by them.

STATUTORY LAW IN OTHER STATES

Areas which have been receiving legislative attention recently[14] are given below with a discussion of the status of legislation in the states of Mississippi,[15] California,[16] Florida,[17] Missouri,[18] New York,[19] and Pennsylvania[20] provided for each area.

A. Definitions

Mississippi Statutes. (§ 43-21-5). "Child means a person who is less than eighteen years of age." Definitions are provided for three types of children - "delinquent child," "neglected child," and "battered child."

California Statutes. (Welfare and Institutions § 600). Although the California statutes do not provide specific definitions, § 600 states that "any person under the age of 18 years who comes within the following descriptions is within the jurisdiction of the juvenile court . . ."

Florida Statutes. (§ 39-01). "Child means . . .person under the age of seventeen years, or any person who is charged with a violation of law occuring prior to the time that person reached the age of seventeen years. Three types of children are defined "dependent child," "Delinquent child," and "child in need of supervision."

Missouri Statutes. (§ 211.021). "Child means a person under seventeen years of age." The Missouri statutes do not define specific types of children. However, in the statute concerning jurisdiction (211.031) the types of proceedings for which the juvenile court has original jurisdiction provides a description of several types of children.

New York Statutes. (§ 1012). "Child means any person or persons alleged to have been abused or neglected . . ." "Abused child means a child less than sixteen years of age whose parent . . ." "Neglected child means a child less than eighteen years of age . . ."

Pennsylvania Statutes. (Tit. 11, § 50-102). "Child means an individual who is: (i) under the age of eighteen years; or (ii) under the age of twenty-one years who committed an act of delinquency before reaching the age of eighteen years." Two types of children are defined - "delinquent child" and "deprived child."

Summary: Analysis of the six state statutes above reveals that there are four possible types of children that can be defined as amenable to youth court jurisdiction. Essentially, they are "delinquent child," "deprived or neglected child," "unruly child or child in need of supervision," and "battered or abused child." Mississippi statutes provide for jurisdiction of all four of these types. Although "unruly child" is not specifically defined, the definition of delinquent child in the Mississippi Statutes encompasses the basic definition of unruly child. That is, Mississippi statutes do not distinguish between delinquent acts which would be a crime for an adult and unruly acts which would not. The age required for youth court jurisdiction ranges from 16 to 21.

B. Right to Counsel

Mississippi Statutes. (§ 43-21-17). "Any person interested in any case shall have the right to appear therein and to be represented by legal counsel of his own choosing and at his own expense." "No proceeding by the court shall be a criminal proceeding, but shall be a civil nature concerned with the care, protection, and rehabilitation of the child in question."

California Statutes. (Welfare and Institutions, § 633). "Upon his appearance before the court at the detention hearing, such minor and his parent or guardian, if present, shall first be informed of the reasons why the minor was taken into custody, the nature of the juvenile court proceedings, and the right of such minor and his parent or guardian to be represented at every stage of the proceedings by counsel".

(§ 634). "When it appears to the court that the minor or his parent or guardian desires counsel but is unable to afford and cannot for that reason employ counsel, the court may appoint counsel."

Florida Statutes. (§ 39.09). "The hearing shall be held as soon as practicable after the petition is filed, but reasonable delay for the purpose of investigation or procuring counsel upon request of the child . . .shall whenever practicable be granted." "Hearings shall be conducted by the judge without a jury, applying the rules of evidence in use in equity cases. . ."

Missouri Statutes. (§ 211.211). "Before any juvenile shall be committed to the state board of training schools, he shall have the opportunity to have and be represented by counsel at a hearing held for that purpose."

New York Statutes. (§ 1043). "The court shall advise the parent or . . .of his right to be represented by counsel of his own choosing and of his right to have an adjournment to send for counsel and consult with him. The court shall also inform the child and the parent or . . .of the child's right to assistance of counsel of his own choosing or to be represented by a law guardian . . ."

Pennsylvania Statutes. (Tit. 11, § 50-317). "Except as otherwise provided a party is entitled to representation by legal counsel at all stages of any proceedings . . .and if he is without financial resources or otherwise unable to employ counsel, to have the court provide counsel for him." "Counsel must be provided for a child unless his parent, guardian, or custodian is present in court and affirmatively waive it."

Summary. The right to counsel appears to be provided in all six states although Florida statutes do not state it as such and the Missouri statutes mention the right to counsel only in connection with commitment to the state training school. Mississippi statutes provides the right to counsel at ones own expense; but Mississippi does not provide the right to counsel as extensively as New York and Pennsylvania statutes which provide for free legal counsel if needed.

C. Admissibility and Conclusiveness of Statements Against Interest or Confessions Made Out of Court by Juvenile.

Mississippi Statutes. (§ 43-21-17). Mississippi statutes do not cover this point specifically. Section 43-21-17 does state that "cases shall be heard . . .without jury; and the adjudicatory hearing shall be conducted under such rules of evidence as may comply with applicable constitutional standards."

California Statutes. (Welfare and Institutions, § 701). "When it appears that a minor has made an extrajudicial admission or confession and denies the same at the hearing, the court may continue the hearing for not to exceed seven days to enable the probation officer to subpoena witnesses to attend the hearing to prove the allegations of the petition."

Florida Statutes. (§ 39.09). Florida statutes do not cover this point specifically. § 39.09 states, however, "Hearings shall be conducted by the judge without a jury, applying the rules of evidence in equity cases in the circuit courts, and adjouring the hearings from time to time as necessary."

Missouri Statutes. (§ 211.271). "After a child is taken into custody as provided in section 211.131, all admissions, confessions, and statements by the child to the juvenile officer and juvenile court personnel . . .are not lawful or proper evidence against the child and shall not be used for any person whatsoever in any proceeding, civil or criminal, other than proceedings under this chapter."

New York Statutes. (§ 1034). New York statutes state that: "No statement made during a preliminary conference . . .may be admitted into evidence at a fact-finding hearing under this act or in a criminal court at any time prior to conviction."

Pennsylvania Statutes. (Tit. 11, § 50-318). Pennsylvania statutes state that: "A child charged with a delinquent act need not be a witness against or otherwise incriminate himself. An extrajudicial statement, if obtained in the course of violation of this act or which could be constitutionally inadmissable in a criminal proceeding, shall not be used against him."

Summary. California, Missouri, New York, and Pennsylvania statutes indicate that extrajudicial statements are generally not admissable under existing statutes. Mississippi statutes, as well as Florida statutes, are not explicit on this point.

D. Right to Trial by Jury.

Mississippi Statutes. (§ 43-21-17). "All cases of children shall be heard separately from the trial of cases against adults, and at any place which the judge deems suitable, and without jury; . . ."

California Statutes. (Welfare and Institutions, § 680). "Except where there is a contested issue of fact or law, the proceeding shall be conducted in an informal nonadversary atmosphere . . ." The annotated cases to Section 680 indicate that "jury trials are not constitutionally compelled." (In re C. (1970) 88 Cal. Rptr. 97, 9 C.A.3d 255).

Florida Statutes. (§ 39.09). Florida statutes state that: "Hearings shall be conducted by the judge without a jury, applying the evidence in use in equity cases in the circuit courts . . ."

Missouri Statutes. (§ 211.171). "The procedure to be followed at the hearing shall be determined by the juvenile court judge and may be as formal or informal as he considers desirable." "The practices and procedure customary in proceedings in equity shall govern all proceedings in the juvenile court."

New York Statutes. Although New York statutes do not specifically mention trial by jury, a 1971 case ruled that "denial of trail by jury in child abuse and neglect proceedings did not deny parents the due process of law." In re S., 1971, 66 Misc. 2d 683, 322, N.Y.S. 2d 170.

Pennsylvania Statutes. (Tit. 11, § 50-316). Pennsylvania statutes state: "Hearings under this act shall be conducted by the court without a jury, in an informal but orderly manner ..."

Summary. Mississippi, Florida, and Pennsylvania statutes explicitly state that hearings shall be conducted without a jury. California provides that hearings shall be conducted in an informal nonadversary atmosphere. Missouri leaves the formality of the hearing to the discretion of the juvenile court judge. New York's Family Court Act concerns abuse and neglect cases and does not require trial by jury.

E. Right to Pre-Trial Release.

Mississippi Statutes. (§ 43-21-13). "If it appears from the petition, or otherwise, that the child is in such condition or surroundings that his welfare requires that his custody be immediately assumed by the court, the judge may cause to be entered or endorsed upon the summons an order that the officer serving same at once take the child into custody; but no child shall be detained unless, in the opinion of the judge, it shall be necessary to insure protection of the child, or necessary for the protection of other children, or to insure his attendance in court at such time as it shall be required. In order to avoid such detention, the officer shall, unless it is impracticable, or has been otherwise ordered by the court, accept the promise of the parents or parent, guardian or custodian of the child, to be responsible for the personal presence of such child at the court at the time and place fixed by the court. If not released, such child shall be placed in custody of a person designated by the court, or taken immediately to the court, or to the place of detention designated by the summons; and the officer taking the child shall immediately notify the court of his possession or disposition of the child.

California Statutes. (§ 626). "An officer who takes a minor into temporary custody under the provisions of Section 625 shall thereafter proceed as follows:

(a) He may release such minor; or

(b) He may prepare in duplicate a written notice to appear before the probation officer of the county in which such minor was taken into custody at a time and place specified in the notice. The notice shall also contain a consise statement of the reasons such minor was taken into custody. He shall deliver one copy of the notice to such minor or to a parent, guardian, or responsible relative of such minor and may require such minor or his parent, guardian, or relative, or both, to such a written promise that either or both will appear at the time and place designated in the notice. Upon the execution of the promise to appear, he shall immediately release such minor. He shall, as soon as practicable, file one copy of the notice with the probation officer; or

(c) He may take such minor without unnecessary delay before the probation officer of the county in which such person was taken into custody, or in which such person resides, or in which the acts take place or the circumstances exist which are alleged to bring the minor within the provisions of Sections 600, 601, or 602, and deliver the custody of such minor to the probation officer.

In determining which disposition of the minor he will make, the officer shall prefer the alternative which least restricts the minor's freedom of movement, provided such alternative is compatible with the best interests of the minor and the community.

Florida Statutes. (§ 39.03). "Unless otherwise ordered by the judge, the person taking the child into custody shall, whenever practicable, release the child to a parent or legal custodian of the child upon agreement of the parent or legal custodian to produce the child in juvenile court at such time as the court may direct, and shall forthwith make a full written report to the court stating the facts by reason of which the child was taken into custody."

Missouri Statutes. (§ 211.101). "If it appears that the child is in such condition or surroundings that his welfare requires that his custody be immediately assumed by the court, the judge may order, by endorsement upon the summons, the officer serving it to take the child into custody at once."

New York Statutes. (§ 1026). The New York statutes provide a detailed procedure for removing a child from his home. (Section 1021-1028). Section 1026 provides that "The probation service or child protective agency may, but need not, condition the return of a child under this section upon the giving of a written promise, without security, of the parent or other person legally responsible for the child's care that he will appear at the family court at a time and place specified in the recognizance and may also require him to bring the child with him." Section 1028 provides that "upon the application of the parent or other person legally responsible for the care of a child temporarily removed under this part for an order returning the child, the court shall hold a hearing to determine whether the child should be returned . . ."

Pennsylvania Statutes. (Tit, 11, § 50-310). "A person taking a child into custody, with all reasonable speed and without first taking the child elsewhere, shall: (1) Notify the parent, guardian or other custodian of the child's apprehension and his whereabouts; (2) Release the child to his parents, guardian, or other custodian upon their promise to bring the child before the court when requested by the court, unless his detention or shelter care is warranted or required under Section 12; or (3) Bring the child . . ." Section 12 (Section 50-309 of this act) provides that a child shall not be obtained unless his detention is required "to protect the person or property of others. . .or because the child may abscound or be removed from the jurisdiction of the court or because he has no parent, guardian, or custodian...or an order for his detention or shelter care has been made by the court pursuant to this act.

Summary. The provisions for pre-trial release are difficult to compare among states due to the possible varied interpretations of the statutes. All five states appear to provide for pre-trial release to parents or guardian upon their promise to appear before the court when requested.

F. Fingerprinting.

Mississippi Statutes. Mississippi statutes do not specifically mention fingerprinting.

California Statutes. (Welfare and Institutions, § 504). "This section [§ 504] shall not be construed to prohibit the Bureau of Criminal Identification and Investigation from transmitting fingerprints or photographs of a minor under the age of 18 years to a law enforcement agency for the purpose of obtaining identification of the minor or from requesting from such agency the history of the minor."

Florida Statutes. (§ 39.03). "Any child taken into custody upon probable cause that he has committed an act which would be a felony if he were an adult shall be fingerprinted and photographed by the law enforcement agency taking said child into custody. Said fingerprints and photograph shall be kept...in a separate file... Such record shall not be a public record. . . If said child [is not adjudicated a delinquent for an offense that would be] a felony under the criminal laws of this state if said child were an adult, then the court in its discretion may order all originals and copies of said fingerprints and photographs promptly destroyed. If said child is adjudicated a delinquent for an offense which would be a felony under the criminal laws of this state if such child were [an adult . .], then the law enforcement agency taking the said fingerprints and photographs shall retain the original thereof . . . [and] shall immediately thereafter forward duplicate copies . . . to the juvenile court [and to other agencies]." "All fingerprints and photographs shall not be considreed public record. Fingerprints and photographs received pursuant to this subsection . . .shall be kept until the child reaches his twenty-first birthday . . .[when] . . . they shall be destroyed." "Nothing contained in this section shall prohibit the fingerprinting of child traffic violators. All records of child traffic violations shall be kept in the full name of the violator and shall be open to inspection and publication in the same manner as adult traffic violations."

Missouri Statutes. (§211.151) "Neither fingerprinting nor a photograph shall be taken of a child taken into custody for any purpose without the consent of the juvenile judge."

New York Statutes. New York Family Courts have jurisdiction over the "neglected" and "abused" child. Therefore, the Family Court statutes do not deal with fingerprinting and juvenile records as much as youth courts which have jurisdiction over delinquents.

Pennsylvania Statutes. No special provisions are provided in the Pennsylvania Juvenile Act concerning fingerprinting.

Summary. Mississippi, New York and Pennsylvania statutes do not specifically provide fingerprinting provisions for juveniles. California statutes allow fingerprinting but are not explicit as to how they should be recorded and kept. Florida statutes provide for fingerprinting and explain in detail where and how long records are to be kept. Missouri does not allow fingerprinting without the consent of the juvenile judge.

G. Publicity of Juvenile Proceedings.

Mississippi Statutes. (§ 43-21-19). "The disposition of a child or any evidence given in any proceedings concerning him shall not be admissible against the child in any case or proceeding in any other court. However, any such records, including names, shall be made available to any office or agency of the State of Mississippi or any subdivision thereof upon the request of such agency or subdivision. When any child for the second time or more shall be adjudged to be a delinquent child, his name and the name of his parents or the person in whose custody he lives shall thereupon be published in a newspaper having a general circulation in the county of said child's residence, along with the facts of such adjudication."

California Statutes. (Welfare and Institutions, § 405). "The Bureau of Criminal Identification and Investigation shall not knowingly transmit to any person or agency any information relating to an arrest or taking into custody of a minor under the age of 18 years at the time of such arrest or taking into custody unless such information also includes the disposition resulting therefrom"

Florida Statutes. (§ 39.12). "Juvenile court records of proceedings under this chapter, except records of traffic violations, shall not be open to inspection by the public."

Missouri Statutes. (§ 211.321). "The proceedings of the juvenile court shall be entered in a book kept for that purpose and known as the juvenile records. These records as well as all information obtained and social records prepared in the discharge of official duty for the court shall be open to inspection only by order of the court to persons having a legitimate interest therein."

New York Statutes. New York Family Courts have jurisdiction over the "neglected" and "abused" child. Therefore, the Family Court statutes do not deal with fingerprinting and juvenile records as much as youth courts which have jurisdiction over delinquents.

Pennsylvania Statutes. (Tit. 11, § 50-316). "Except in hearings to declare a person in contempt of court, the general public shall be excluded from hearings under this act."

Summary. Mississippi statutes dictate that the name of the child and his parents or guardian shall be published along with facts of the case after a second adjudgement of delinquency. The other states do not provide in their statutes for this. All six states appear to prohibit publicity of the proceedings during adjudication.

H. Inspection of Juvenile Records.

Mississippi Statutes. (§ 43-21-41). "Between the first day of January and the fifteenth day of February . . .the clerk of the youth court shall record . . .the number and disposition of all cases. . . and such completed forms shall be forwarded to the state department of public welfare for its use. When such records are requested for statistical purposes, the names and identity of such children shall not be disclosed from the reports or records so furnished."

California Statutes. (Welfare and Institutions, § 827). "Except as provided in Section 828, [i.e., information . . .relating to the taking of a minor into custody may be disclosed to another law enforcement agency, or to any person or agency which has a legitimate need for the information for purposes of official disposition of a case], a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents . . .may be inspected only by court personnel, the minor who is the subject of the proceeding, his parent or guardian, the attorneys for such parties, and such other persons as may be designated by court order of the judge of the juvenile court upon filing a petition thereof."

Florida Statutes. (§ 39-12). "All records, except those for traffic violations, shall be inspected only upon order of the judge, by persons deemed by the judge to have a proper interest therein, except that a child and the parents or legal custodians of the child and their attorneys shall always have the right to inspect and copy any official record pertaining to the child. The judge may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect and make abstracts from official records, under whatever conditions upon their use and disposition the judge may deem proper, and may punish by contempt proceeding any violation of those conditions."

Missouri Statutes. (§ 211.321). The proceedings of the juvenile court shall be entered in a book kept for that purpose and known as the juvenile records. These records as well as all information obtained and social records prepared in the discharge of official duty for the court shall be open to inspection only by order of the court to persons having legitimate interest therein."

New York Statutes. New York Family Courts have jurisdiction over the "neglected" and "abused" child. Therefore, the Family Court statutes do not deal with fingerprinting and juvenile records as much as youth courts which have jurisdiction over delinquents.

Pennsylvania Statutes. (Tit. 11, § 50-334). "All files and records of the court in a proceeding under this act are open to inspection only by:

(1) The judge, officers and professional staff of the court.

(2) The parties to the proceeding and their counsel and representatives, but the person in this category shall not be permitted to see reports revealing the names of confidential sources of information contained in social reports, except at the discretion of the court.

(3) A public or private agency or institution providing supervision or having custody of the child under order of the court.

(4) A court and its probation and other officials or professional staff and the attorney for the defendent for use in preparing a presentence report in a criminal case in which the defendent is convicted and who prior thereto had been a party to the proceeding in juvenile court.

(5) With leave of court, any other person or agency or institution having a legitimate interest in the proceedings or in the work of the courts."

(Tit. 11, § 50-335). "Law enforcement records and files concerning a child shall be kept separate from the records and files of arrests of adults. Unless a charge of delinquency is transferred for criminal prosecution under section 28, the interest of national security requires, or the court otherwise orders in the interest of the child, the records and files shall not be open to public inspection or their contents disclosed to the public; but inspection of the records and files is permitted by:

(1) The court having the child before it in any proceeding.

(2) Counsel for a party to the proceeding.

(3) The officers of institutions or agencies to whom the child is committed.

(4) Law enforcement officers of other jurisdictions when necessary for the discharge of their official duties.

(5) A court in which he is convicted of a criminal offense for the purpose of a presentence report or other dispositional proceeding, or by officials of penal institutions and other penal facilities to which he is committed, or by a parole board in considering his parole or discharge or in exercising supervision over him."

Summary. The statutes appear to provide that the inspection of juvenile records is very restricted with the primary decision of who may inspect such records resting in the hands of the juvenile court judge.

I. Expungement of Juvenile Records.

Mississippi Statutes. Mississippi statutes do not provide for the expungement of juvenile records. The wording of § 43-21-41 seems to indicate that all records are kept on file by the state department of public welfare.

California Statutes. (Welfare and Institutions, § 781). The person or the county probation officer may, . . .after five years . . ., petition the court for sealing of the records, . . ."

(§ 826). "After five years from the date on which jurisdiction of the juvenile court over a minor is terminated, the judge or clerk of the juvenile court, or the probation officer, may destroy all records and papers in the proceedings concerning the minor. Exhibits shall be destroyed . . . The juvenile court record, any minute book entries, dockets, and judgement dockets shall not be destroyed and shall constitute for all purposes the record in lieu of the records, papers and exhibits destroyed. The juvenile court record, any minute book entries, dockets, and judgement dockets in juvenile traffic matters may be destroyed after five years from the date on which jurisdiction . . . is terminated."

Florida Statutes. (§ 39.12). "The juvenile court shall make and keep records of all cases brought before it pursuant to this chapter and shall preserve the records pertaining to a child until ten years after the last entry was made and may then destroy them, except that records of cases where orders were entered permanently depriving a parent of the custody of a child shall be preserved permanently."

Missouri Statutes. (§ 211.321) "The court may, either on its own motion or upon application by the child or his representative, or upon application by the juvenile officer, enter an order to destroy all social histories, records, and information, other than the official court file, and may enter an order to seal the official court file, as all peace officers' records, at any time after the child has reached his seventeenth birthday if the court finds that it is in the best interest of the child that such action or any part thereof be taken, unless the jurisdiction of the court is continued beyond the child's seventeenth birthday, in which event such action or any part thereof may be taken by the court at any time after the closing of the child's case."

New York Statutes. New York Family Courts have jurisdiction over the "neglected" and "abused" child. Therefore, the Family Court statutes do not deal with fingerprinting and juvenile records as much as youth courts which have jurisdiction over delinquents.

Pennsylvania Statutes. No special provisions are provided in the Pennsylvania Juvenile Act for expungement of juvenile records.

Summary. California, Florida and Missouri statutes provide that certain records can be destroyed after a specified amount of time. Mississippi, New York and Pennsylvania statutes do not specifically mention this expungment of records.

CASE LAW IN MISSISSIPPI

The following cases originated in Mississippi courts. Only the more recent cases are included. The cases are provided in descending chronological order with the most recent cases presented first. Recent U.S. Supreme Court decisions[21] should be considered as these Mississippi cases are read.

Patterson v. Hopkins (DC Miss) 350 F Supp 676. (1972).

Earl Stanley Patterson, a minor of age 17 years and a member of the black race, was arrested on a misdemenaor charge by officers of the City of Clarksdale. He was placed in the Coahoma County Jail because there was no city jail. The Federal District Court rules that while a fully equipped juvenile detentention facility would be ideal, the failure to provide such a facility does not deprive juveniles of the county of "due process and fair treatment." The court reiterated that where "critically important actions determining vitally important statutory rights of the juvenile are concerned," the juvenile is entitled to a hearing upon constitutional principles relating to due process with the assistance of counsel. Although trial by jury is not a constitutional requirement in juvenile cases, the applicable due process standard of "fundamental fairness" must be used.

Hamburg v. Mississippi (S.C. Miss.), 248 So 2nd 430. (May 24, 1971).

Two young men (Gary and Rodney Hamburg) were arrested on suspicion of attempting to sell L.S.D. The two were arrested after an informer called police and described the attempted sale, the suspected acid dealer, and the car he drove away in. Rodney Hamburg, owner and operator of the vehicle, was arrested for drunk driving. His brother, Gary Hamburg, was also arrested for public drunkeness. Two other passengers in the car, James Smith and Mike Mitchell were released. Several pills of L.S.D. were found in the car and Rodney Hamburg was then charged with possession of L.S.D. Though they were arrested without warrant, the informer's description of the car and suspect was ruled to be acceptable as sufficient "probable cause" for the officers. The state's main witness was Mike Mitchell, one of the other occupants of the automobile. His testimony implicated Gary hamburg as the possessor of the L.S.D. On cross-examination, the defendants attempted to show that the witness was a juvenile delinquent and was afraid of being returned to Columbia Training School; that he was guilty of various crimes which the jury should consider in weighing the credibility of the witness. The trial court allowed the defendents to show that the witness was on probation as a juvenile delinquent but would not permit the defendents to show the nature of the crimes committed by the witness. The Hamburgs were found guilty but appealed.

Mississippi Supreme Court Justice Rodgers decided that the state had not acceptably connected Rodney Hamburg to the possession of the L.S.D. He also ruled that "the right of the accused to confront and cross-examine his accuser is so broad and fundamental as to transcend the right of a juvenile accuser to keep secret his former delinquent activity, and the refusal to permit a full cross-examination of a juvenile whose testimony implicated one defendent with possession of L.S.D., and who had been adjudged a juvenile delinquent, and was afraid of being returned to the training school, was in error." Justice Rodgers ordered the trial to be discharged and remanded. The Hamburgs got a new trial.

Smith v. Smith, 229 So 2d 551 (1969).

Case involves the rape of a 20 year old white girl by two young negro men. They were tried as adults in circuit courts. [illegible] appeal the defendent argued that if he had been charged with assaulting his victim with the intent to rape, maim, or even murder her, rather than rape, he would have been remitted to custody for rehabilitation as a juvenile offender rather than prosecuted as an adult. The State Supreme Court ruled that the juvenile laws were not of such "irrational disparity" in the treatment of offenders as to violate the Fourteenth Amendment.

Boatright v Yalobusha County Youth Court 223 So 2d 303 (1969).

Two white youths were committed to Columbia Training School for throwing bricks at youthful black males. They were charged with intent to provoke a breach of the peace. The State Supreme Court ruled that the statutes do not provide jurisdiction to the youth court for breach of peace cases which is considered a misdemeanor.

Love v State 221 So 2d 92 (1969).

Youth court of Panola County adjudged Lavern Love to be a delinquent and directed that he be committed to Oakley Training School. Love appealed to the Chancery Court alleging that he did not have effective counsel to aid him in his trial. Chancery Court dismissed the appeal, with the Chancellor saying he knew of his own knowledge that the defendent did have an attorney, that there was a full and fair hearing, and that the attorney appointed by the court had protected the rights of the defendent. The State Supreme Court cited In re Gault in ruling that defendent should have a "full-blown" hearing for past commitment hearings.

Griffin v. Bell 215 So 2d 573 (1968).

Child of Mrs. Mary Tiny Adams Bell stayed with Mr. and Mrs. James Griffin for approximately two years. When Mrs. Adams married Mr. Walter Bell she asked for the return of the child from the Griffins. The Youth Court of Hinds County gave custody of the child to the Griffins citing neglect as the reason. The Chancery Court on appeal awarded custody of the child to the natural, mother, Mrs. Adams Bell. The State Supreme Court ruled that Youth Court had no jurisdiction to award custody of a minor to her maternal aunt (Mrs. Griffin), where the aunt's petition for custody showed on its face that the child was not neglected as that term is defined by statute.

Re Interest of Green, 203 So 2d 470, 88 S Ct 2297 (1967).

Youth Court of Grenada County transferred the custody of Tommy Green, 18 years of age, from his parents to the Superintendent of Oakley Training School for violating the conditional probation he was under as a result of an earlier proceeding. The violation concerned delinquent leaving his classroom and going to another school, urging other students to walk out of classes during regular school periods and in other ways disrupting classes at both schools. Green claimed that the probation demand "stay out of trouble was too vague" and that the youth court should not have jurisdiction because the school disturbance was of the "breach of peace" type for which youth court does not have jurisdiction. The State Supreme Court ruled that the probation conditions were not too vague and that the Youth Court had jurisdiction because of its earlier jurisdiction where the child was found delinquent.

Re Long, 184 So 2d 861 (1966).

Chancery Court of Sunflower County committed a 13-year-old minor to training school. Supreme Court held that the petition charging that the child had been charged as a "delinquent-neglected child" was insufficient to bring the child within the Youth Court Act. Also, summons commanding appearance at hearing on July 2 but not served until July 29, failed to comply requirement that summons be served no less than three days before the date of set hearing. Chancery Court decisions were reversed.

Guyot v. State, 252 M 509, 175 So 2d 184 (1965).

Lawrence T. Guyot, Jr. was convicted in the County Court of Forrest County of contributing to the delinquency of a minor, a thirteen year old girl. Judge Ethridge ruled that the statute applies to any person who "willfully" or "knowingly" contributes to the delinquency of a minor and the records did not show this.

Re Slay, 245 M 294, 147 So 2d 299 (1962).

Mary Alice Slay, minor child of Mrs. Roxi Slay Riley, was found to be delinquent and was committed to the custody of the Columbia Training School by the Clarke County Youth Court. The case was brought to court by a Child Welfare worker who asserted that Mary Alice Slay was a neglected child. Judge Rodgers ruled that due process procedures as provided by the statutes were not followed for a charge of neglected child or delinquent child. In short, the appellant was never charged with being a delinquent. Moreover, the Youth Court had no authority to commit a neglected child to Columbia Training School. Therefore Youth Court was reversed.

Harris v State, 241 M 46, 129 So 2d 372 (1961).

Harris and Colman were charged with contributing to the delinquency of minors by selling beer and whiskey to three minors, two of whom were fifteen years of age and one thirteen years. The Wayne County Youth Court found the defendents guilty as charged. The question to be settled is whether the Youth Court had jurisdiction over these adults. Judge Ethridge ruled that the Youth Court has exclusive original jurisdiction of delinquent or neglected children. In short, the provisions of Section 13 of the Youth Court, and other limiting provisions of that legislation, reflect a legislative intent to provide a criminal statute creating a specific misdemeanor, which must be enforced in the regular criminal courts of the state. Under Mississippi Constitution Sections 26, 27, and 31, a person charged with an offense under Section 13 of the act must be proceeded against by affadavit or indictment in the traditional way, with a right to a trial by jury. Thus, conviction of appellants by the Youth Court Division of the Chancery Court was beyond its jurisdiction and invalid.

Sharp v Slate, 240 M 629, 127 So 2d 865 (1961).

Homer Frank Sharp, 16 years of age, was found to be a juvenile delinquent by the Neshoba County Youth Court Division and was ordered to be placed in the reform school at Columbia. It was alleged by the Youth Counselor in Neshoba County that Sharp was "a juvenile delinquent fast becoming uncontrollable by his parents," and that he was "violating laws of the State of Mississippi in various ways." No summons or other notice was issued for the appearance of said minor or his parents. The question is whether the minor can waive the summons. Also in point was the question of whether the petition contained sufficient facts. The court ruled that there were not sufficient facts in the petition explaining why Sharp was a delinquent or what Mississippi Laws had been violated. The court also held that a minor cannot waive the service of process. Thus the lower court was reversed.

Other fairly recent Mississippi cases are Walker v. State, 238 M 532, 119 So 2d 277, which provides that the definition of "neglected child" is sufficiently broad to apply to a minor whose mother was dead and whose father did odd jobs in various cities throughout the state, residing with a paternal aunt and left uncared for at night while the aunt was working; Monk v. State, 238 M 658, 116 So 2d 810, which provides that the Youth Court is a court of statutory and limited jurisdiction, and the facts showing jurisdiction should appear in its orders: and Mathews v. State, 240 M 189, 126 So 2d 245, which ruled that a mother who entrusted her 7-month-old daughter to a nursery without informing it of the child's need for regular daily medication for a weak heart may be convicted under § 43-21-27, Mississippi Code of 1972.

CASE LAW GENERALLY

This section is limited to cases which originated in juvenile courts and have been heard by the U.S. Supreme Court. Through these cases, the Supreme Court has progressively defined some of the due process rights of juveniles.

Kent v. United States, 383 U.S. 541 (1966).

A sixteen year old boy who had been on probation for two years was allegedly involved in housebreaking, robbery and rape. The Juvenile Court of the District of Columbia waived jurisdiction and remitted the juvenile to trial in the District Court. The judge waived jurisdiction after "full investigation" which did not include a hearing, findings, reasons, or access of counsel to the Social Service file. The Supreme Court ruled that there is no place in our system of law for reaching a result of such tremendous consequences without a ceremony - without a hearing, without effective assistance of counsel, without a statement of reasons.

In re Gault, 387 U.S. 1 (1967).

A fifteen year old boy, Greg Gault, was ordered committed to the State Industrial school as a juvenile delinquent by the Juvenile Court of Gila County, Arizona. Gault appealed claiming he was denied various procedural due process rights. The U.S. Supreme Court ruled on five different points. (1) The court cited Kent v. United States that the waiver hearing must measure up to the essentials of due process and fair treatment. The holding related only to the adjudicatory stage of the juvenile process, where commitment to a state institution may follow. (2) Due process requires that adequate written notice be afforded the child and his parents or guardian. (3) The child and his parents must be advised of their right to be represented by counsel and, if they are unable to afford counsel, that counsel will be appointed to represent the child. (4) The constitutional privilege against self-incrimination is applicable in such proceedings. (5) Absent a valid confession, a juvenile in such proceedings must be afforded the rights of confrontation and sworn testimony of witnesses available for cross-examination.

De Backer v. Brainard, 396 U.S. 28 (1969).

A seventeen year old juvenile was charged under laws of Nebraska with being a delinquent child because he had a forged bank check which he intended to use. He asked for a jury trial, arguing that this was a right guaranteed him by the Sixth Amendment to the Constitution and that a statute prohibiting juries in delinquency proceedings was therefore unconstitutional. The Supreme Court ruled that the decisions of Duncan v. Louisiana, 391 U.S. 145, and Bloom v. Illinois, 391 U.S.194 which require a trial by jury for certain acts committed by adults, was decided after the juvenile court hearing of appellant. Therefore the appellant would have had no constitutional right to a trial by jury if he had been tried as an adult in a criminal proceeding. Thus, the case is not appropriate for deciding whether Nebraska's statute is constitutional in light of Duncan and Bloom.

In re Winship, 397 U.S. 358 (1970)

A twelve year old boy committed an act that if done by an adult would constitute the crime of larceny. The New York Family Court judge relied on a "preponderance of the evidence" to try the boy which is the standard of proof required by the New York Family Court Act. The question is whether this standard or the standard of "proof beyond a reasonable doubt" should be relied upon in such juvenile cases. The Supreme Court ruled that "proof beyond a reasonable doubt," which is required by the Dur Process Clause in criminal trials, is among the "essentials of due process and fair treatment" which is required by In re Gault, 387 U.S. 1, during the adjudicatory stage when a juvenile is charged with an act that would constitute a crime if committed by an adult.

McKeiver v. Pennsylvania, 403 U.S. 528 (1971).

A sixteen year old boy was adjudged a delinquent after being charged with robbery, larceny and receiving stolen goods. A fifteen year old boy was adjudged a delinquent after being charged with assault and battery on a police officer and conspiracy. The two cases were consolidated on appeal for denial of counsel's request of trail by jury. The question is whether the right to a trial by jury is "fundamental" in the context of a juvenile court. The U.S. Supreme Court held that trial by jury is not constitutionally required. The applicable due process standard in juvenile proceedings is "fundamental fairness."

Summary. The Supreme Court has provided through the rulings in Kent, Gault, and Winship the following due process guarantees for juvenile court proceedings in which a juvenile is charged with an offense which would be a crime if he were an adult; right to appropriate notice, right to counsel, right to confrontation and cross examination of witnesses, privilege against self-incrimination, right to standard of proof beyond a reasonable doubt. The court in the McKeiver case decided that trial by jury was not constitutionally required in the adjudicatory phase of such a proceeding.

Lower federal and state courts have expanded the role of due process in juvenile proceedings.[22] It has been held that the Miranda warnings must be given juveniles taken into custody.[23] The voluntariness of a juvenile's waiver of constitutional rights must be carefully probed.[24] Even though it is not called "arrest" when a juvenile is taken into custody, the "probable cause" requirement of the fourth amendment must be met.[25] This requirement must also be satisfied to validate a search and seizure of evidence used against a juvenile.[26] The administrative transfer of an adjudged delinquent from a juvenile rehabilitative institution to an adult correction institution without a hearing is a denial of equal protection and impinges on due process.[27] In one jurisdiction, the jury trial has been extended to juvenile courts as a matter of state constitutional due process.[28]

TWO MODEL JUVENILE COURT ACTS

MODEL JUVENILE COURT ACT I[29]

Section 1. Interpretation. This Act shall be construed to effectuate the following public purposes:

(1) to provide for the care, protection, and wholesome moral, mental, and physical development of children coming within its provisions;

(2) consistent with the protection of the public interest, to remove from children committing delinquent acts taint of criminality and the consequences of criminal behavior and to substitute therefor a program of treatment, training, and rehabilitation;

(3) to achieve the foregoing purposes in a family environment whenever possible, separating the child from his parents only when necessary for his welfare or in the interest of public safety;

(4) to provide a simple judicial procedure through which this act is executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights recognized and enforced; and

(5) to provide simple interstate procedures which permit resort to cooperative measures among the juvenile courts of the several States when required to effectuate the purposes of this Act.

Section 2. Definitions. As used in this Act:

(1) "child" means an individual who is:

(i) under the age of 18 years; or

(ii) under the age of 21 years who committed an act of delinquency before reaching the age of 18 years; [or]

[(iii) under 21 years of age who committed an act of delinquency after becoming 18 years of age and is transferred to the juvenile court by another court having jurisdiction over him;]

(2) "delinquent act" means an act designated a crime under the law, including local [ordinances] [or resolutions] of this State, or of another State if the act occurred in that State, or under federal law, and the crime does not fall under paragraph (iii) of subsection (4) [and is not a juvenile traffic offense as defined is Section 44] [and the crime is not a traffic offense as defined in [Traffic Code of the State] other than [designate the more serious offenses which should be included in the jurisdiction of the juvenile court such as drunken driving, negligent homicide, etc.]]

(3) "delinquent child" means a child who has committed a delinquent act and needs treatment or rehabilitation;

(4) "unruly child" means a child who:

(i) while subject to compulsory school attendance is habitually and without justification truant from school;

(ii) is habitually disobedient of the reasonable and lawful commands of his parent, guardian, or other custodian and is ungovernable; or

(iii) has committed an offense applicable only to a child; and

(iv) in any of the foregoing is in need of treatment or rehabilitation;

(5) "deprived child" means a child who:

(i) is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals, and the deprivation is not due primarily to the lack of financial means of his parents, guardian, or other custodian;

(ii) has been placed for care or adoption in violation of law; or

(iii) has been abandoned by his parents, guardian, or other custodian; or

[(iv) is without a parent, guardian, or legal custodian;]

(6) "shelter care" means temporary care of a child in physically unrestricted facilities;

(7) "protective supervision" means supervision ordered by the court of children found to be deprived or unruly;

(8) "custodian" means a person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom legal custody of the child has been given by order of a court;

(9) "juvenile court" means the [here designate] court of this State.

Section 3. [Jurisdiction.]

(a) The juvenile court has exclusive original jurisdiction of the following proceedings, which are governed by this Act:

(1) proceedings in which a child is alleged to be delinquent, unruly, or deprived [or to have committed a juvenile traffic offense as defined in Section 44;]

(2) proceedings for the termination of parental rights except when a part of an adoption proceeding; and

(3) proceedings arising under Sections 39 through 42.

(b) The juvenile court also has exclusive original jurisdiction of the following proceedings, which are governed by the laws relating thereto without regard to the other provisions of this Act:

[(1) proceedings for the adoption of an individual of any age;]

(2) proceedings to obtain judicial consent to the marriage, employment, or enlistment in the armed services of a child, if consent is required by law;

(3) proceedings under the Interstate Compact on Juveniles; and

(4) proceedings under the Interstate Compact on the Placement of Children; and

[(5) proceedings to determine the custody or appoint a guardian of the person of a child.]

[Section 4. [Concurrent Jurisdiction.] The juvenile court has concurrent jurisdiction with [ ] court to treat or commit a mentally retarded or mentally ill child.]

Section 5. [Probation Services.]

[(a) In [counties of over population] the [ ] court may appoint one or more probation officers who shall serve [at the pleasure of the court] [and are subject to removal under the civil service laws governing the county.] They have the powers and duties stated in Section 6. Their salaries shall be fixed by the court with the approval of the [governing board of the county.] If more than one probation officer is appointed, one may be designated by the court as the chief probation officer or director of court services, who shall be responsible for the administration of the probation services under the direction of the court.]

[b) In all other cases the [Department of Corrections] [State [county] child welfare department] [or other appropriate State agency] shall provide suitable probation services to the juvenile court of each [county.] The cost thereof shall be paid out of the general revenue funds of the [State] [county]. The probation officer or other qualified person assigned to the court by the [Department of Corrections] [State] [county] child welfare department] [or other appropriate State agency] has the powers and duties stated in Section 6.]

Section 6. [Powers and Duties of Probation Officers.]

(a) For the purpose of carrying out the objectives and purposes of this Act and subject to the limitations of this Act or imposed by the Court, a probation officer shall

(1) make investigations, reports, and recommendations to the court created by this Act;

(2) receive and examine complaints and charges of delinquency, unruly conduct or deprivation of a child for the purpose of considering the commencement of proceedings under this Act;

(3) supervise and assist a child placed on probation or in his protective supervision or care by order of the court or other authority of law;

(4) make appropriate referrals to other private or public agencies of the community if their assistance appears to be needed or desirable;

(5) take into custody and detain a child who is under his supervision or care as a delinquent, unruly or deprived child if the probation officer has reasonable cause to believe that the child's health or safety is in imminent danger, or that he may abscond or be removed

from the jurisdiction of the court, or when ordered by the court pursuant to this Act. Except as provided by this Act a probation officer does not have the powers of a law enforcement officer. He may not conduct accusatory proceedings under this Act against a child who is or may be under his care or supervision; and

(5)(6)perform all other functions designated by this Act or by order of the court pursuant thereto.

(b) Any of the foregoing functions may be performed in another State if authorized by the court of this State and permitted by the laws of the other State.

[Section 7. [Referees.]

(a) The judge may appoint one or more persons to serve at the pleasure of the judge as referees on a full or part-time basis. A referee shall be a member of the bar [and shall qualify under the civil service regulations of the County]. His compensation shall be fixed by the judge [with the approval of the governing board of the County] and paid out of [ ].

(b) The judge may direct that hearings in any case or class of cases be conducted in the first instance by the referee in the manner provided by this Act. Before commencing the hearing the referee shall inform the parties who have appeared that they are entitled to have the matter heard by the judge. If a party objects the hearing shall be conducted by the judge.

(c) Upon the conclusion of a hearing before a referee he shall transmit written findings and recommendations for disposition to the judge. Prompt written notice and copies of the findings and recommendations shall be given to the parties to the proceeding. The written notice also shall inform them of the right to a rehearing before the judge.

(d) A rehearing may be ordered by the judge at any time and shall be ordered if a party files written request therefor within 3 days after receiving the notice required in subsection (c).

(e) Unless a rehearing is ordered the findings and recommendations become the findings and order of the court when confirmed in writing by the judge.]

Section 8. [Commencement of Proceedings.] A proceeding under this Act may be commenced:

(1) by transfer of a case from another court as provided in Section;

[(2) as provided in Section 44 in a proceeding charging the violation of a traffic offense;] or

(3) by the court accepting jurisdiction as provided in Section 40 or accepting supervision of a child as provided in Section 42; or

(4) in other cases by the filing of a petition as provided in this Act. The petition and all other documents in the proceeding shall be entitled "In the interest of   , a [child] [minor] under [18] [21] years of age."

Section 9. [Transfer from Other Courts] If it appears to the court in a criminal proceeding that the defendant [is a child] [was under the age of 18 years at the time the offense charged was alleged to have been committed], the court shall forthwith transfer the case to the juvenile court together with a copy of the accusatory pleading and other papers, documents, and transcripts of testimony relating to the case. It shall order that the defendant be taken forthwith to the juvenile court or to a place of detention designated by the juvenile court, or release him to the custody of his parent, guardian, custodian, or other person legally responsible for him, to be brought before the juvenile court at a time designated by that court. The accusatory pleading may serve in lieu of a petition in the juvenile court unless that court directs the filing of a petition.

Section 10. [Informal Adjustment]

(a) Before a petition is filed, the probation officer or other officer of the court designated by it, subject to its direction, may give counsel and advice to the parties with a view to an informal adjustment if it appears:

(1) the admitted facts bring the case within the jurisdiction of the court.

(2) counsel and advice without an adjudication would be in the best interest of the public and the child; and

(3) the child and his parents, guardian or other custodian consent thereto with knowledge that consent is not obligatory.

(b) The giving of counsel and advice cannot extend beyond 3 months from the day commenced unless extended by the court for an additional period not to exceed 3 months and does not authorize the detention of the child if not otherwise permitted by this Act.

(c) An incriminating statement made by a participant to the person giving counsel or advice and in the discussions or conferences incident thereto shall not be used against the declarant over objection in any hearing except in a hearing on disposition in a juvenile court proceeding or in a criminal proceeding against him after conviction for the purpose of a presentence investigation.

Section 11. [Venue] A proceeding under this Act shall be commenced in the [county] in which the child resides. If delinquent or unruly conduct is alleged, the proceeding may be commenced in the [county] in which the Acts constituting the alleged delinquent or unruly conduct occurred. If deprivation is alleged the proceeding may be brought in the [county] in which the child is present when it is commenced.

Section 12. [Transfer to Another Juvenile Court Within the State.]

(a) If the child resides in a [county] of the State and the proceeding is commenced in a court of another [county] the court, on motion of a party or on its own motion made prior to a final disposition, may transfer the proceeding to the county of the child's residence for further action. Like transfer may be made if the residence of the child changes pending the proceeding. The proceeding shall be transferred if the child has been adjudicated delinquent or unruly and other proceedings involving the child are pending in the juvenile court of the [county] of his residence.

(b) Certified copies of all legal and social documents and records pertaining to the case on file with the clerk of the court shall accompany the transfer.

Section 13. [Taking into Custody]

(a). A child may be taken into custody:

(1) pursuant to an order of the court under this Act;

(2) pursuant to the laws of arrest;

(3) by a law enforcement officer or duly authorized officer of the court if there are reasonable grounds to believe that the child is suffering from illness or injury or is in immediate danger from his surroundings, and that his removal is necessary; or

(4) by a law enforcement officer or duly authorized officer of the court if there are reasonable grounds to believe that the child has run away from his parents, guardian, or other custodian.

(b) The taking of a child into custody is not an arrest, except for the purpose of determining its validity under the constitution of this State or of the United States.

Section 14. Detention of Child. A child taken into custody shall not be detained or placed in shelter care prior to the hearing on the petition unless his detention or care is required to protect the person or property of others or of the child or because the child may abscond or be removed from the jurisdiction of the court or because he has no parent, guardian, or custodian or other person able to provide supervision and care for him and return him to the court when required, or an order for his detention or shelter care has been made by the court pursuant to this Act.

Section 15. Release or Delivery to Court.

(a) A person taking a child into custody with all reasonable speed and without first taking the child elsewhere, shall:

(1) release the child to his parents, guardian, or other custodian upon their promise to bring the child before the court when requested by the court, unless his detention or shelter care is warranted or required under Section 14; or

(2) bring the child before the court or deliver him to a detention or shelter care facility designated by the court or to a medical facility if the child is believed to suffer from a serious physical condition or illness which requires prompt treatment. He shall promptly give written notice thereof, together with a statement of the reason for taking the child into custody, to a parent, guardian, or other custodian and to the court. Any temporary detention or questioning of the child necessary to comply with this subsection shall conform to the procedures and conditions prescribed by this Act and rules of court.

(b) If a parent, guardian, or other custodian, when requested, fails to bring the child before the court as provided in subsection (a) the court may issue its warrant directing that the child be taken into custody and brought before the court.

Section 16. [Place of Detention]

(a) A child alleged to be delinquent may be detained only in:

(1) a licensed foster home or a home approved by the court;

(2) a facility operated by a licensed child welfare agency;

(3) a detention home or center for delinquent children which is under the direction or supervision of the court or other public authority or of a private agency approved by the court; or

(4) any other suitable place or facility, designated or operated by the court. The child may be detained in a jail or other facility for the detention of adults only if the facility in paragraph (3) is not available, the detention is in a room separate and removed from those for adults, it appears to the satisfaction of the court that public safety and protection reasonably require detention, and it so orders.

(b) The official in charge of a jail or other faicilty for the detention of adult offenders or persons charged with crime shall inform the court immediately if a person who is or appears to be under the age of 18 years is received at the facility and shall bring him before the court upon request or deliver him to a detention or shelter care facility designated by the court.

(c) If a case is transferred to another court for criminal prosecution the child may be transferred to the appropriate officer or detention facility in accordance with the law governing the detention of persons charged with crime.

(d) A child alleged to be deprived or unruly may be detained or placed in shelter care only in the facilities stated in paragraphs (1), (2), and (4) of subsection (a) and shall not be detained in a jail or other facility intended or used for the detention of adults charged with criminal offenses or of children alleged to be delinquent.

Section. 17. [Release from Detention or Shelter Care - Hearing - Conditions of Release]

(a) If a child is brought before the court or delivered to a detention or shelter care facility designated by the court the intake or other authorized officer of the court shall immediately make an investigation and release the child unless it appears that his detention or shelter care is warranted or required under Section 14.

(b) If he is not so released, a petition under Section 21 shall be promptly made and presented to the court.

An informal detention hearing shall be held promptly and not later than 72 hours after he is placed in detention to determine whether his detention or shelter care is required under Section 14. Reasonable notice thereof, either oral or written, stating the time, place, and purpose of the detention hearing shall be given to the child and if they can be found, to his parents, guardian, or other custodian. Prior to the commencement of the hearing, the court shall inform the parties of their right to counsel and to appointed counsel if they are needy persons, and of the child's right to remain silent with respect to any allegations of delinquency or unruly conduct.

(c) If the child is not so released and a parent, guardian or custodian has not been notified of the hearing, did not appear or waive appearance at the hearing, and files his affidavit showing these facts, the court shall rehear the matter without unnecessary delay and order his release, unless it appears from the hearing that the child's detention or shelter care is required under Section 14.

[Section 18. [Subpoena.] Upon application of a party the court or the clerk of the court shall issue, or the court on its own motion may issue, subpoenas requiring attendance and testimony of witnesses and production of papers at any hearing under this Act]

Section 19. [Petition - Preliminary Determination.] A petition under this Act shall not be filed unless the [probation officer,] the court, or other person authorized by the court has determined and endorsed upon the petition that the filing of the petition is in the best interest of the public and the child.

Section 20. [Petition - Who May Make] Subject to Section 19 the petition may be made by any person, including a law enforcement officer, who has knowledge of the facts alleged or is informed and believes that they are true.

Section 21. [Contents of Petition.] The petition shall be verified and may be on information and belief. It shall set forth plainly:

(1) the facts which bring the child within the jurisdiction of the court, with a statement that it is in the best interest of the child and the public that the proceeding be brought and, if delinquency or unruly conduct is alleged, that the child is in need of treatment or rehabilitation;

(2) the name, age, and residence address, if any, of the child on whose behalf the petition is brought;

(3) the names and residence addresses, if known to petitioner, of the parents, guardian, or custodian of the child and of the child's spouse, if any. If none of his parents, guardian, or custodian resides or can be found within the State, or if their respective places of residence address are unknown, the name of any known adult relative residing within the [county,] or, if there be none, the known adult relative residing nearest to the location of the court; and

(4) if the child is in custody and, if so, the place of his detention and the time he was taken into custody.

Section 22. [Summons.]

(a) After the petition has been filed the court shall fix a time for hearing thereon, which, if the child is in detention, shall not be later than 10 days after the filing of the petition. The court shall direct the issuance of a summons to the parents, guardian, or other custodian, a guardian ad litem, and any other persons as appear to the court to be proper or necessary parties to the proceeding, requiring them to appear before the court at the time fixed to answer the allegations of the petition. The summons shall also be directed to the child if he is 14 or more years of age or is alleged to be a delinquent or unruly child. A copy of the petiiton shall accompany the summons unless the summons is served by publication in which case the published summons shall indicate the general nature of the allegations and where a copy of the petition can be obtained.

(b) The court may endorse upon the summons an order directing the parents, guardian or other custodian of the child to appear personally at the hearing and directing the person having the physical custody or control of the child to bring the child to the hearing.

(c) If it appears from affidavit filed or from sworn testimony before the court that the conduct, condition, or surroundings of the child are endangering his health or welfare or those of others, or that he may abscond or be removed from the jurisdiction of the court or will not be brought before the co urt, notwithstanding the service of the summons, the court may endorse upon the summons an order that a law enforcement officer shall serve the summons and take the child into immediate custody and bring him forthwith before the court.

(d) The summons shall state that a party is entitled to counsel in the proceedings and that the court will appoint counsel if the party is unable without undue financial hardship to employ counsel.

(e) A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing. If the child is present at the hearing, his counsel, with the consent of the parent, guardian or other custodian, or guardian ad litem, may waive service of summons in his behalf.

Section 23. [Service of Summons.]

(a) If a party to be served with a summons is within this State and can be found, the summons shall be served upon him personally at least 24 hours before the hearing. If he is within this State and cannot be found, but his address is known or can with reasonable diligence be ascertained, the summons may be served upon him by mailing a copy by registered or certified mail at least 5 days before the hearing. If he is without this State but he can be found or his address is known, or his whereabouts or address can with reasonable diligence be ascertained, service of the summons may be made either by delivering a copy to him personally or mailing a copy to him by registered or certified mail at least 5 days before the hearing.

(b) If after reasonable effort he cannot be found or his post office address ascertained, whether he is within or without this State, the court may order service of the summons upon him by publication in accordance with [Rule] [Section] [The general service by publication statutes.] The hearing shall not be earlier than 5 days after the date of the last publication.

(c) Service of the summons may be made by any suitable person under the direction of the court.

(d) The court may authorize the payment from [county funds] of the costs of service and of necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

Section 24. Conduct of Hearings.

(a) Hearings under this Act shall be conducted by the court without a jury, in an informal but orderly manner, and separate from other proceedings not included in Section 3.

(b) If requested by a party or ordered by the court the proceedings shall be recorded by stenographic notes or by electronic, mechanical, or other appropriate means. If not so recorded full minutes of the proceedings shall be kept by the court.

(c) Except in hearings to declare a person in contempt of court [and in hearings under Section 44] the general public shall be excluded from hearings under this Act. Only the parties, their counsel, witnesses, and other persons accompanying a party for his assistance, and any other persons as the court finds have a proper interest in the proceeding or in the work of the court may be admitted by the court. The court may temporarily exclude the child from the hearing except while allegations of his delinquency are being heard.

Section 25. [Service by Publication - Interlocutory Order of Disposition.]

(a) If service of summons upon a party is made by publication the court may conduct a provisional hearing upon the allegations of the petition and enter an interlocutory order of disposition if:

(1) the petition alleges delinquency, unruly conduct, or deprivation of the child;

(2) the summons served upon any party (i) states that prior to the final hearing on the petition designated in the summons a provisional hearing thereon will be held at a specified time and place, (ii) requires the party who is served other than by publication to appear and answer the allegations of the petition at the provisional hearing, (iii) states further that findings of fact and orders of disposition made pursuant to the provisional hearing will become final at the final hearing unless the party served by publication appears at the final hearing, and (iv) otherwise conforms to Section 22; and

(3) the child is personally before the court at the provisional hearing.

(b) All provisions of this Act applicable to a hearing on a petition, to orders of disposition, and to other proceedings dependent thereon shall apply under this Section, but findings of fact and orders of disposition have only interlocutory effect pending the final hearing on the petition. The rights and duties of the party served by publication are not affected except as provided in subsection (c).

(c) If the party served by publication fails to appear at the final hearing on the petition the findings of fact and interlocutory orders made become final without further evidence and are governed by this Act as if made at the final hearing. If the party appears at the final hearing the findings and orders shall be vacated and disregarded and the hearing shall proceed upon the allegations of the petition without regard to this Section.

Section 26. [Right to Counsel.]

(a) Except as otherwise provided under this Act a party is entitled to representation by legal counsel at all stages of any proceedings under this Act and if as a needy person he is unable to employ counsel, to have the court provide counsel for him. If a party appears without counsel the court shall ascertain whether he knows of his right thereto and to be provided with counsel by the court if he is a needy person. The court may continue the proceeding to enable a party to obtain counsel and shall provide counsel for an unrepresented needy person upon his request. Counsel must be provided for a child not represented by his parent, guardian, or custodian. If the interests of 2 or more parties conflict separate counsel shall be provided for each of them.

(b) A needy person is one who at the time of requesting counsel is unable without undue financial hardship to provide for full payment of legal counsel and all other necessary expenses of representation.

(c) The [prosecuting attorney] upon request of the court shall present the evidence in support of the petition and otherwise conduct the proceedings on behalf of the State.

Section 27. [Other Basic Rights.]

(a) A party is entitled to the opportunity to introduce evidence and otherwise be heard in his own behalf and to cross-examine witnesses.

(b) A child charged with a delinquent act need not be a witness against or otherwise incriminate himself. An extra-judicial statement, if obtained in the course of violation of this Act or which would be constitutionally inadmissible in a criminal proceeding, shall not be used against him. Evidence illegally seized or obtained shall not be received over objection to establish the allegations made against him. A confession validly made by a child out of court is insufficient to support an adjudication of delinquency unless it is corroborated in whole or in part by other evidence.

Section 28. [Investigation and Report.]

(a) If the allegations of a petition are admitted by a party or notice of a hearing under Section 34 has been given the court, prior to the hearing on need for treatment or disposition, may direct that a social study and report in writing to the court be made by the probation officer of the court, Commissioner of the Court or other like officer or other person designated by the court, concerning the child, his family, his environment, and other matters relevant to disposition of the case. If the allegations of the petition are not admitted and notice of a hearing under Section 34 has not been given the court shall not direct the making of the study and report until after the court has heard the petition upon notice of hearing given pursuant to this Act and the court has found that the child committed a delinquent act or is an unruly or deprived child.

(b) During the pendency of any proceeding the court may order the child to be examined at a suitable place by a physician or psychologist and may also order medical or surgical treatment of a child who is suffering from a serious physical condition or illness which in the opinion of a licensed physician requires prompt treatment, even if the parent, guardian, or other custodian has not been given notice of a hearing, is not available, or without good cause informs the court of his refusal to consent to the treatment.

Section 29. [Hearing - Findings - Dismissal]

(a) After hearing the evidence on the petition the court shall make and file its findings as to whether the child is a deprived child, or if the petition alleges that the child is delinquent or unruly, whether the acts ascribed to the child were committed by him. If the court finds that the child is not a deprived child or that the allegations of delinquency or unruly conduct have not been established it shall dismiss the petition and order the child discharged from any detention or other restriction theretofore ordered in the proceeding.

(b) If the court finds [on proof beyond a reasonable doubt] that the child committed the acts by reason of which he is alleged to be delinquent or unruly it shall proceed immediately or at a postponed hearing to hear evidence as to whether the child is in need of treatment or rehabilitation and to make and file its findings thereon. In the absence of evidence to the contrary evidence of the commission of acts which constitute a felony is sufficient to sustain a finding that the child is in need of treatment or rehabilitation. If the court finds that the child is not in need of treatment or rehabilitation it shall dismiss the proceedin[illegible]ischarge the child from any detention or other restriction theretofore ordered.

(c) If the court finds from clear and convincing evidence that the child is deprived or that he is in need of treatment or rehabilitation as a delinquent or unruly child, the court shall proceed immediately or at a postponed hearing to make a proper disposition of the case.

(d) In hearings under subsections (b) and (c) all evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and relied upon to the extent of its probative value even though not otherwise competent in the hearing on the petition. The parties or their counsel shall be afforded an opportunity to examine and controvert written reports so received and to cross-examine individuals making the reports. Sources of confidential information need not be disclosed.

(e) On its motion or that of a party the court may continue the hearings under this Section for a reasonable period to receive reports and other evidence bearing on the disposition or the need for treatment or rehabilitation. In this event the court shall make an appropriate order for detention of the child or his release from detention subject to supervision of the court during the period of the continuance. In scheduling investigations and hearings the court shall give priority to proceedings in which a child is in detention or has otherwise been removed from his home before an order of disposition has been made.

Section 30. [Disposition of Deprived Child.]

(a) If the child is found to be a deprived child the court may make any of the following orders of disposition best suited to the protection and physical, mental, and moral welfare of the child:

(1) permit the child to remain with his parents, guardian, or other custodian, subject to conditions and limitations as the court prescribes, including supervision as directed by the court for the protection of the child;

(2) subject to conditions and limitations as the court prescribes transfer temporary legal custody to any of the following:

(i) any individual who, after study by the probation officer or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child;

(ii) an agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child; or

(iii) the Child Welfare Department of the [county] [State,] or other public agency authorized by law to receive and provide care for the child;]

(iv) an individual in another State with or without supervision by an appropriate officer under Section 40; or

(3) without making any of the foregoing orders transfer custody of the child to the juvenile court of another State if authorized

by and in accordance with Section 39 if the child is or is about to become a resident of that State.

(b) Unless a child found to be deprived is found also to be delinquent he shall not be committed to or confined in an institution or other facility designed or operated for the benefit of delinquent children.

Section 31. [Disposition of Delinquent Child.] If the child is found to be a delinquent child the court may make any of the following orders of disposition best suited to his treatment, rehabilitation, and welfare:

(1) any order authorized by Section 30 for the disposition of a deprived child;

(2) placing the child on probation under the supervision of the probation officer of the court or the court of another State as provided in Section 41, or the [Child Welfare Department operating within the county] under conditions and limitations the court prescribes;

(3) placing the child in an institution, camp, or other facility for delinquent children operated under the direction of the court [or other local public authority;] or

(4) committing the child to [designate the State department to which commitments of delinquent children are made or, if there is no department, the appropriate State institution for delinquent children]

Section 32. [Disposition of Unruly Child.] If the child is found to be unruly the court may make any disposition authorized for a delinquent child except commitment to [the State department or State institution to which commitment of delinquent children may be made] [If after making the disposition the court finds upon a further hearing that the child is not amenable to treatment or rehabilitation under the disposition it may make a disposition otherwise authorized by Section 31.]

Section 33. [Order of Adjudication - Non-Criminal.]

(a) An order of disposition or other adjudication in a proceeding under this Act is not a conviction of crime and does not impose any civil disability ordinarily resulting from a conviction or operate to disqualify the child in any civil service application or appointment. A child shall not be committed or transferred to a penal institution or other facility used primarily for the execution of sentences of persons convicted of a crime.

(b) The disposition of a child and evidence adduced in a hearing in juvenile court may not be used against him in any proceeding in any court other than a juvenile court, whether before or after reaching majority, except in dispositional proceedings after conviction of a felony for the purposes of a pre-sentence investigation and report.

Section 34. [Transfer to Other Courts.]

(a) After a petition has been filed alleging delinquency based on conduct which is designated a crime or public offense under the laws, including local ordinances, [or resolutions] of this State, the court before hearing the petition on its merits may transfer the offense for prosecution to the appropriate court having jurisdiction of the offense if:

(1) the child was 16 or more years of age at the time of the alleged conduct;

(2) a hearing on whether the transfer should be made is held in conformity with Sections 24, 26, and 27;

(3) notice in writing of the time, place, and purpose of the hearing is given to the child and his parents, guardian, or other custodian at least 3 days before the hearing;

(4) the court finds that there are reasonable grounds to believe that

(i) the child committed the delinquent act alleged;

(ii) the child is not amenable to treatment or rehabilitation as a juvenile through available facilities;

(iii) the child is not committable to an institution for the mentally retarded or mentally ill; and

(iv) the interests of the community require that the child be placed under legal restraint or discipline.

(b) The transfer terminates the jurisdiction of the juvenile court over the child with respect to the delinquent acts alleged in the petition.

(c) No child, either before or after reaching 18 years of age, shall be prosecuted for an offense previously committed unless the case has been transferred as provided in this Section.

(d) Statements made by the child after being taken into custody and prior to the service of notice under subsection (a) or at the hearing under this Section are not admissible against him over objection in the criminal proceedings following the transfer.

(e) If the case is not transferred the judge who conducted the hearing shall not over objection of an interested party preside at the hearing on the petition. If the case is transferred to a court of which the judge who conducted the hearing is also a judge he likewise is disqualified from presiding in the prosecution.

Section 35. [Disposition of Mentally Ill or Mentally Retarded Child.]

(a) If, at a dispositional hearing of a child found to be a delinquent or unruly child or at a hearing to transfer a child to another court under Section 34, the evidence indicates that the child may be suffering from mental retardation or mental illness the court before making a disposition shall commit the child for a period not exceeding 60 days to an appropriate institution, agency, or individual for study and report on the child's mental condition.

(b) If it appears from the study and report that the child is committable under the laws of this State as a mentally retarded or mentally ill child the court shall order the child detained and direct that appropriate authority initiate proceedings within 10 days after the order is made for the child's commitment.

(c) If it does not so appear, or proceedings are not promptly initiated, or the child is found not to be committable, the court shall proceed to the disposition or transfer of the child as otherwise provided by this Act.

Section 36. [Limitations of Time on Orders of Disposition.]

(a) An order terminating parental rights is without limit as to duration.

(b) An order of disposition committing a delinquent or unruly child to the [State Department of Corrections or designated institution for delinquent children,] continues in force for 2 years or until the child is sooner discharged by the [department or institution to which the child was committed.] The court which made the order may extend its duration for an additional 2 years, subject to like discharge, if:

(1) a hearing is held upon motion of the department or institution to which the child was committed prior to the expiration of the order;

(2) reasonable notice of the hearing and an opportunity to be heard is given to the child and the parent, guardian, or other custodian; and

(3) the court finds that the extension is necessary for the treatment rehabilitation of the child.

(c) Any other order of disposition continues in force for not more than 2 years. The court may sooner terminate its order or extend its duration for further periods. An order of extension may be made if:

(1) a hearing is held prior to the expiration of the order upon motion of a party or on the court's own motion;

(2) reasonable notice of the hearing and opportunity to be heard are given to the parties affected;

(3) the court finds that the extension is necessary to accomplish the purposes of the order extended; and

(4) the extension does not exceed 2 years from the expiration of the prior order.

(d) Except as provided in subsection (b) the court may terminate an order of disposition or extension prior to its expiration, on or without an application of a party, if it appears to the court that the purposes of the order have been accomplished. If a party may be adversely affected by the order of termination the order may be made only after reasonable notice and opportunity to be heard have been given to him.

(e) Except as provided in subsection (a) when the child reaches 21 years of age all orders affecting him then in force terminate and he is discharged from further obligation or control.

Section 37. Modification or Vacation of Orders.

(a) An order of the court shall be set aside if (1) it appears that it was obtained by fraud or mistake sufficient therefor in a civil action, or (2) the court lacked jurisdiction over a necessary party or or the subject matter, or (3) newly discovered evidence so requires.

(b) Except an order committing a delinquent child to the State Department of Corrections or an institution for delinquent children, an order terminating parental rights or an order of dismissal, an order of the court may also be changed, modified, or vacated on the ground that changed circumstances so require in the best interest of the child. An order granting probation to a child found to be delinquent may be revoked on the ground that the conditions of probation have not been observed.

(c) Any party to the proceeding, the probation officer or other person having supervision or legal custody of or an interest in the child may petition the court for the relief provided in this Section. The petition shall set forth in concise language the grounds upon which the relief is requested.

(d) After the petition is filed the court shall fix a time for hearing and cause notice to be served (as a summons is served under Section 23) on the parties to the proceeding or affected by the relief sought. After the hearing, which may be informal, the court shall deny or grant relief as the evidence warrants.

Section 38. [Rights and Duties of Legal Custodian.] A custodian to whom legal custody has been given by the court under this Act has the right to the physical custody of the child, the right to determine the nature of the care and treatment of the child, including ordinary medical care and the right and duty to provide for the care, protection, training, and education, and the physical, mental, and moral welfare of the child, subject to the conditions and limitations of the order and to the remaining rights and duties of the child's parents or guardian.

Section 39. [Disposition of Non-Resident Child]

(a) If the court finds that a child who has been adjudged to have committed a delinquent act or to be unruly or deprived is or is about to become a resident of another State which has adopted the Uniform Juvenile Court Act, or a substantially similar Act which includes provisions corresponding to Sections 39 and 40, the court may defer hearing on need of treatment and disposition and request by any appropriate means the juvenile court of the [county] of the child's residence or prospective residence to accept jurisdiction of the child.

(b) If the child becomes a resident of another State while on probation or under protective supervision under order of a juvenile court of this State, the court may request the juvenile court of the [county] of the State in which the child has become a resident to accept jurisdiction of the child and to continue his probation or protective supervision.

(c) Upon receipt and filing of an acceptance the court of this State shall transfer custody of the child to the accepting court and cause him to be delivered to the person designated by that court to receive his custody. It also shall provide that court with certified copies of the order adjudging the child to be a delinquent, unruly, or deprived child, of the order of transfer, and if the child is on probation or under protective supervision under order of the court, of the order of disposition. It also shall provide that court with a statement of the facts found by the court of this State and any recommendations and other information it considers of assistance to the accepting court in making a disposition of the case or in supervising the child on probation or otherwise.

(d) Upon compliance with subsection (c) the jurisdiction of the court of this State over the child is terminated.

Section 40. [Disposition of Resident Child Received from Another State.]

(a) If a juvenile court of another State which has adopted the Uniform Juvenile Court Act, or a substantially similar Act which includes provisions corresponding to Sections 39 and 40, requests a juvenile court of this State to accept jurisdiction of a child found by the requesting court to have committed a delinquent act or to be an unruly or deprived child, and the court of this State finds, after investigation that the child is, or is about to become, a resident of the county in which the court presides, it shall promptly and not later than 14 days after receiving the request issue its acceptance in writing to the requesting court and direct its probation officer or other person designated by it to take physical custody of the child fxm the requesting court and bring him before the court of this State or make other apporpriate provisions for his appearance before the court.

(b) Upon the filing of certified copies of the orders of the requesting court (1) determining that the child committed a delinquent act or is an unruly or deprived child, and (2) committing the child to the jurisdiction of the juvenile court of this State, the court of this State shall immediately fix a time for a hearing on the need for continuance of any probation or protective supervision.

(c) The hearing and notice thereof and all subsequent proceedings are governed by this Act. The court may make any order of disposition permitted by the facts and this Act. The orders of the requesting court re conclusive that the child committed the delinquent act or is an unruly or deprived child and of the facts found by the court in making the orders, subject only to Section 37. If the requesting court has made an order placing the child on probation or under protective supervision, a like order shall be entered by the court of this State. The court may modify or vacate the order in accordance with Section 37.

Section 41. [Ordering Out-of-State Supervision.]

(a) Subject to the provisions of this Act governing dispositions and to the extent that funds of the [county] are available the court may place a child in the custody of a suitable person in another State. On obtaining the written consent of a juvenile court of another State which has adopted the Uniform Juvenile Court Act or a substantially similar Act which includes provisions corresponding to Sections 41 and 42 the court of this State may order that the child be placed under the supervision of a probation officer or other appropriate official designated by the accepting court and another filed with the clerk of the [Board of County Commissioners] and the [county] of the requesting court of this State.

(b) The reasonable cost of the supervision including the expenses of necessary travel shall be borne by the [county] of the requesting court of this State. Upon receiving a certified statement signed by the judge of the accepting court of the cost incurred by the supervision the court of this State shall certify if it so appears that the sum so stated was reasonably incurred and file it with [the appropriate officials] of the [county] [State] for payment. The [appropriate officials] shall thereupon issue a warrant for the sum stated payable to the [appropriate officials] of the [county] of the accepting court.

Section 42. [Supervision Under Out-of-State Order.]

(a) Upon receiving a request of a juvenile court of another State which has adopted the Uniform Juvenile Court Act, or a substantially similar act which includes provisions corresponding to Sections 41 and 42 to provide supervision of a child under the jurisdiction of that court, a court of this State may issue its written acceptance to the requesting court and designate its probation or other appropriate officer who is to provide supervision, stating the probable cost per day therefor.

(b) Upon the receipt and filing of a certified copy of the order of the requesting court placing the child under the supervision of the officer so designated the officer shall arrange for the reception of the child from the requesting court, provide supervision pursuant to the order and this Act, and report thereon from time to time together with any recommendations he may have to the requesting court.

(c) The court in this State from time to time shall certify to the requesting court the cost of supervision that has been incurred and request payment therefor from the appropriate officials of the [county] of the requesting court to the appropriate officials if the [county] of the accepting court.

(d) The court of this State at any time may terminate supervision by notifying the requesting court. In that case, or if the supervision is terminated by the requesting court, the probation officer supervising the child shall return the child to a representative of the requesting court authorized to receive him.

Section 43. [Powers of Out-of-State Probation Officers.] If a child has been placed on probation or protective supervision by a juvenile court of another State which has adopted the Uniform Juvenile Court Act or a substantially similar act which includes provisions corresponding to this Section, and the child is in this State with or without the permission of that court, the probation officer of that court of other person designated by that court to supervise or take custody of the child has all the powers and privileges in this State with respect to the child as given by this Act to like officers or persons of this State including the right of visitation, counseling, control, and direction, taking into custody, and returning to that State.

[Section 44. [Juvenile Traffic Offenses.]

(a) Definition. Except as provided in subsection (b), a juvenile traffic offense consists of a violation by a child or:

(1) a law or local ordinance or resolution governing the operation of a moving motor vehicle upon the streets, highways of this State, or the waterways within or adjoining this State; or

(2) any other motor vehicle traffic law or local ordinance [or resolution] of this State if the child is taken into custody and detained for the violation or is transferred to the juvenile court by the court hearing the charge.

(b) A juvenile traffic offense is not an act of delinquency unless the case is transferred to the delinquency calendar as provided in subsection (g).

(c) Exceptions. A juvenile traffic offense does not include a violation of: [Set forth the sections of State statutes violations of which are not to be included as traffic offenses, such as the so-called negligent homicide statute sometimes appearing in traffic codes, driving while intoxicated, driving without, or during suspension of, a driver's license, and the like.]

(d) Procedure. The [summons] [notice to appear] [or other designation of a ticket] accusing a child of committing a juvenile traffic offense constitutes the commencement of the proceedings in the juvenile court of the county in which the alleged violation occurred and serves in place of a summons and petition under this Act. These cases shall be filed and heard separately from other proceedings of the court. If the child is taken into custody on the charge, Sections 14 to 17 apply. If the child is, or after commencement of the proceedings becomes, a resident of another [county] of this State, Section 12 applies.

(e) Hearing. The court shall fix a time for hearing and give reasonable notice thereof to the child, and if their address is known to the parents, guardian, or custodian. If the accusation made in the [summons] [notice to appear] [or other designation of a ticket] is denied an informal hearing shall be held at which the parties have the right to subpoena witnesses, present evidence, cross-examine witnesses, and appear by counsel. The hearing is open to the public.

(f) Disposition. If the court finds on the admission of the child or upon the evidence that he committed the offense charged it may make one or more of the following orders:

(1) reprimand or counsel with the child and his parents;

(2) [suspend] [recommend to the [appropriate official having the authority] that he suspend] the child's privilege to drive under stated conditions and limitations for a period not to exceed that authorized for a like suspension of an adult's license for a like offense;

(3) require the child to attend a traffic school conducted by public authority for a reasonable period of time; or

(4) order the child to remit to the general fund of the [State] [county] [city] [municipality] a sum not exceeding the lesser of $50.00 or the maximum applicable to an adult for a like offense.

(g) In lieu of the preceding orders, if the evidence indicates the advisability thereof, the court may transfer the case to the delinquency calendar of the court and direct the filing and service of a summons and petition in accordance with this Act. The judge so ordering is disqualified upon objection from acting further in the case prior to an adjudication that the child committed a delinquent act.]

[Section 45. [Traffic Referee.]

(a) The court may appoint one or more traffic referees who shall serve at the pleasure of the court. The referee's salary shall be fixed by the court [subject to the approval of the [Board of County Commissioners].]

(b) The court may direct that any case or class of cases arising under Section 44 shall be heard in the first instance by a traffic referee who shall conduct the hearing in accordance with Section 44. Upon the conclusion of the hearing the traffic referee shall transmit written findings of fact and recommendations for disposition to the judge with a copy thereof to the child and other parties to the proceedings.

(c) Within 3 days after receiving the copy the child may file a request for a rehearing before the judge of the court who shall thereupon rehear the case at a time fixed by him. Otherwise, the judge may confirm the findings and recommendations for disposition which then become the findings and order of disposition of the court.]

Section 46. [Juvenile Traffic Offenses - Suspension of Jurisdiction.]

(a) The [Supreme] Court, by order filed in the office of the [ ] of the [county], may suspend the jurisdiction of the juvenile courts over juvenile traffic offenses or one or more classes thereof. The order shall designate the time the suspension becomes effective and offenses committed thereafter shall be tried by the appropriate court in accordance with law without regard to this Act. The child shall not be detained or imprisoned in a jail or other facility for the detention of adults unless the facility conforms to the subsection (a) of Section 16.

(b) The [Supreme] Court at any time may restore the jurisdiction of the juvenile courts over these offenses or any portion thereof by like filing of its order of restoration. Offenses committed thereafter are governed by this Act.

Section 47. [Termination of Parental Rights.]

(a) The court by order may terminate the parental rights of a parent with respect to his child if:

(1) the parent has abandoned the child;

(2) the child is a deprived child and the court finds that the conditions and causes of the deprivation are likely to continue or will not be remedied and that by reason thereof the child is suffering

or will probably suffer serious physical, mental, moral, or emotional harm; or

(3) the written consent of the parent acknowledged before the court has been given.

(b) If the court does not make an order of termination of parental rights it may grant an order under Section 30 if the evidence is clear and convincing that the child is a deprived child and the court so finds.

Section 48. [Proceeding for Termination of Parental Rights.]

(a) The petition shall comply with Section 21 and state clearly that an order for termination of parental rights is requested and that the effect thereof will be as stated in the first sentence of Section 49.

(b) If the paternity of a child born out of wedlock has been established prior to the filing of the petition the father shall be served with summons as provided by this Act. He has the right to be heard unless he has relinquished all parental rights with reference to the child. The putative father of the child whose paternity has not been established, upon proof of his paternity of the child, may appear in the proceedings and be heard. He is not entitled to notice of hearing on the peitition unless he has custody of the child.

Section 49. [Effect of Order Terminating Parental Rigths.] An order terminating the parental rights of a parent terminates all his rights and obligations with respect to the child and of the child to him arising from the parental relationship. The parent is not thereafter entitled to notice of proceedings for the adoption of the child by another nor has he any right to object to the adoption or otherwise to participate in the proceedings.

Section 50. [Commitment to Agency.]

(a) If, upon entering an order terminating the parental rights of a parent, there is no parent having parental rights, the court shall commit the child to the custody of the [state] [County Child Welfare Department] or a licensed child-placing agency, willing to accept custody for the purpose of placing the child for adoption, or in the absence thereof in a foster home or take other suitable measures for the care and welfare of the child. The custodian has authority to consent to the adoption of the child, his marriage, his enlistment in the armed forces of the United States, and surgical and other medical treatment for the child.

(b) If the child is not adopted within 2 years after the date of the order and a general guardian of the child has not been appointed by the [ ] court, the child shall be returned to the court for entry of further orders for the care, custody, and control of the child.

Section 51. [Guardian ad litem.] The court at any stage of a proceeding under this Act, on application of a party or on its own motion, shall appoint a guardian ad litem for a child who is a party to the proceeding if he has no parent, guardian, or custodian appearing on his behalf or their interests conflict with his or in any other case in which the interests of the child require a guardian. A party to the proceeding or his employee or representative shall not be appointed.

Section 52. [Costs and Expenses for Care of Child.]

(a) The following expenses shall be a charge upon the funds of the county upon certification thereof by the court:

(1) the cost of medical and other examinations and treatment of a child ordered by the court;

(2) the cost of care and support of a child committed by the court to the legal custody of a public agency other than an institution for delinquent children, or to a private agency or individual other than a parent;

(3) reasonable conpensation for services and related expenses of counsel appointed by the court for a party;

(4) reasonable compensation for a guardian ad litem;

(5) the expense of service of summons, notices, subpoenas, travel expense of witnesses, transportation of the child, and other like expenses incurred in the proceedings under this Act.

(b) If, after due notice to the parents or other persons legally obligated to care for and support the child, and after affording them an opportunity to be heard, the court finds that they are financially able to pay all or part of the costs and expenses stated in paragraphs (1), (2), (3), and (4) of subsection (a), the court may order them to pay the same and prescribe the manner of payment. Unless otherwise ordered payment shall be made to the clerk of the juvenile court for remittance to the person to whom compensation is due, or if the costs and expenses have been paid by the [county] to the [appropriate officer] of the [county].

Section 53. [Protective Order.] On application of a party or on the court's own motion the court may make an order restraining or otherwise controlling the conduct of a person if:

(1) an order of disposition of a delinquent, unruly, or deprived child has been or is about to be made in a proceeding under this Act;

(2) the court finds that the conduct (1) is or may be detrimental or harmful to the child and (2) will tend to defeat the execution of the order of disposition; and

(3) due notice of the application or motion and the grounds therefor and an orrpotunity to be heard thereon have been given to the person against whom the order is directed.

Section 54. [Inspection of Court Files and Records.] [Except in cases arising under Section 44] all files and records of the court in a proceeding under this Act are open to inspection only by:

(1) the judge, officers, and professional staff of the court:

(2) the parties to the proceeding and their counsel and representatives:

(3) a public or private agency or institution providing supervision or having custody of the child under order of the court;

(4) a court and its probation and other officails or professional staff and the attorney for the defendant for use in preparing a presentence report in a criminal case in which the defendant is convicted and who prior thereto had been a party to the proceeding in juvenile court;

(5) with leave of court any other person or agency or institution having a legitimate interest in the proceeding or in the work of the court.

Section 55. [Law Enforcement Records.] Law enforcement records and files concerning a child shall be kept separate from the records and files of arrests of adults. Unless a charge of delinquency is transferred for criminal prosecution under Section 34, the interest of national security requires, or the court otherwise orders in the interest of the child, the records and files shall not be open to public inspection of their contents disclosed to the public; but inspection of the records and files is permitted by:

(1) a juvenile court having the child before it in any proceeding;

(2) counsel for a party to the proceeding;

(3) the officers of public institutions or agencies to whom the child is committed;

(4) law enforcement officers of other jurisdictions when necessary for the discharge of their official duties; and

(5) a court in which he is convicted of a criminal offense for the purpose of a pre-sentence report or other dispositional proceeding, or by officials of penal institutions and other penal facilities to which he is committed, or by a parole board in considering his parole or discharge or in exercising supervision over him.

Section 56. [Children's Fingerprints, Photographs.]

(a) No child under 14 years of age shall be fingerprinted in the investigation of a crime except as provided in this Section. Fingerprints of a child 14 or more years of age who is referred to the court may be taken and filed by law enforcement officers in investigating the commission of the following crimes: [specify such crimes as murder, non-negligent manslaughter, forcible rape, robbery, aggravated assault, burglary, housebreaking, purse snatching, and automobile theft.]

(b) Fingerprint files of children shall be kept separate from those of adults. Copies of fingerprints known to be those of a child shall be maintained on a local basis only and not sent to a central State or federal depository unless needed in the interest of national security.

(c)

(c) Fingerprint files of children may be inspected by law enforcement officers when necessary for the discharge of their official duties. Other inspections may be authorized by the court in individual cases upon a showing that it is necessary in the public interest.

(d) Fingerprints of a child shall be removed from the file and destroyed if:

(1) a petition alleging delinquency is not filed, or the proceedings are dismissed after either a petition is filed or the case is transferred to the juvenile court as provided in Section 9, or the child is adjudicated not to be a delinquent child; or

(2) the child reaches 21 years of age and there is no record that he committed a criminal offense after reaching 16 years of age.

(e) If latent fingerprints are found during the investigation of an offense and a law enforcement officer has probable cause to believe that they are those of a particular child he may fingerprint the child regardless of age or offense for purposes of immediate comparison with the latent fingerprints. If the comparison is negative the fingerprint card and other copies of the fingerprints taken shall be immediately destroyed. If the comparison is positive and the child is referred to the court, the fingerprint card and other copies of the fingerprints taken shall be delivered to the court for disposition. If the child is not referred to the court, the fingerprints shall be immediately destroyed.

(f) Without the consent of the judge, a child shall not be photographed after he is taken into custody unless the case is transferred to another court for prosecution.

Section 57. [Sealing of Records.]

(a) On application of a person who has been adjudicated delinquent or unruly or on the court's own motion, and after a hearing, the court shall order the sealing of the files and records in the proceeding, including those specified in Sections 55 and 56, if the court finds:

(1) 2 years have elapsed since the final discharge of the person;

(2) since the final discharge he has not been convicted of a felony, or of a misdemeanor involving moral turpitude, or adjudicated a delinquent or unruly child and no proceeding is pending seeking conviction or adjudication; and

(3) he has been rehabilitated.

(b) Reasonable notice of the hearing shall be given to:

(1) the prosecuting attorney of the county;

(2) the authority granting the discharge if the final discharge was from an institution or from parole; and

(3) the law enforcement officers or department having custody of the files and records if the files and records specified in Sections 55 and 56 are included in the application or motion.

(c) Upon the entry of the order the proceeding shall be treated as if it never occurred. All index references shall be deleted and the person, the court, and law enforcement officers and departments shall properly reply that no record exists with respect to the person upon inquiry in any matter. Copies of the order shall be sent to each agency or official therein named. Inspection of the sealed files and records thereafter may be permitted by an order of the court upon petition by the person who is the subject of the records and only by those persons named in the order.

[Section 58. [Contempt Powers.] The court may punish a person for contempt of court for disobeying an order of the court or for obstructing or interfering with the proceedings of the court or the enforcement of its orders subject to the laws relating to the procedures therefor and the limitations thereon.]

Section 59. [Appeals.]

(a) An aggrieved party, including the State or a subdivision of the State, may appeal from a final order, judgment, or decree of the juvenile court to the [Supreme Court] [court of general jurisdiction] by filing written notice of appeal within 30 days after entry of the order, judgment, or decree, or within any further time the [Supreme Court] [court of general jurisdiction] grants, after entry of the order, judgment, or decree. [The appeal shall be heard by the [court of general jurisdiction] upon the files, records, and minutes or transcript of the evidence of the juvenile court, giving appreciable weight to the findings of the juvenile court.] The name of the child shall not appear on the record on appeal.

(b) The appeal does not stay the order, judgment, or decree appealed from, but the [Supreme Court] [Court of General Jurisdiction] may otherwise order on application and hearing consistent with this Act if suitable provision is made for the care and custody of the child. If the order, judgment or decree appealed from grants the custody of the child to, or withholds it from, one or more of the parties to the appeal it shall be heard at the earliest practicable time.

Section 60. [Rules of Court] The [Supreme] Court of this State may adopt rules of procedure not in conflict with this Act governing proceedings under it.

Section 61. [Uniformity of Interpretation.] This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it.

Section 62. [Short Title] This Act may be cited as the Uniform Juvenile Court Act.

Section 63. [Repeal.] The following Acts and parts of Acts are repealed:

(1)

(2)

(3)

Section 64. [Time of Taking Effect] This Act shall take effect

MODEL JUVENILE COURT ACT II[30]

Section 1. Purposes.

This Act shall be interpreted and construed as to effectuate the following purposes:

(a) To preserve the unity of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of children coming within the provisions of this Act;

(b) Consistent with the protection of the public interest, to remove from children committing delinquent acts the consequences of criminal behavior, and to substitute therefor a program of supervision, care and rehabilitation;

(c) To achieve the foregoing purposes in a family environment whenever possible, separating the child from his parents only when necessary for his welfare or in the interests of public safety;

(d) To provide judicial procedures through which the provisions of this Act are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights recognized and enforced.

Section 2. Definitions.

As used in this Act:

(a) "Child" means an individual who is:

(1) under the age of 18 years; or

(2) under 21 years of age and who committed an act of delinquency before reaching the age of 18 years.

(b) "Minor" means an individual who is under the age of 21 years.

(c) "Adult" means an individual 21 years of age or older.

(d) "Court" means the family division of the (   ) as herein established.

(e) "Judge" means judge of the family division of the (   ).

(f) "Detention care" means the temporary care of children in secure custody pending court disposition.

(g) "Shelter care" means the temporary care of children in physically unrestricting facilities pending court disposition.

(h) "Guardianship of the person of a minor" means the duty and authority to make important decisions in matters having a permanent effect on the life and development of the minor and to be concerned about his general welfare. It shall include but shall not necessarily be limited in either number or kind to:

(1) the authority to consent to marriage, to enlistment in the armed forces of the United States, or to major medical, psychiatric, and surgical treatment; to represent the minor in legal actions; to make other decisions concerning the minor of substantial legal significance;

(2) the authority and duty of reasonable visitation, except to the extent that such right of visitation has been limited by court order;

(3) the rights and responsibilities of legal custody when guardianship of the person is exercised by the natural or adoptive parent, except where legal custody has been vested in another individual, agency or institution;

(4) the authority to consent to the adoption of the minor and to make any other decision concerning him which his parents

or only living parent, have been judically terminated as provided for in the statutes governing termination of parental rights to facilitate adoption, or when both of his legal parents are deceased.

(i) "Legal custody" means a legal status created by court order which vests in a custodian the right to have physical custody of the child or minor and to determine where and with whom he shall live within the State; and the right and duty to protect, train, and discipline him and to provide him with food, shelter, education and ordinary medical care, all subject to the powers, rights, duties and responsibilities of the guardian of the person of the child and subject to any residual parental rights and responsibilities. An individual granted legal custody shall exercise the rights and responsibilities personally unless otherwise authorized by the court.

(j) "Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parent after the transfer of legal custody or guardianship of the person, including but not necessarily limited to the right of visitation, consent to adoption, the right to determine religious affiliation, and the responsibility for support.

(k) "Commit" means to transfer legal custody.

(l) "Probation" means a legal status created by court order following an adjudication of delinquency, or in need of supervision, whereby a minor is permitted to remain in his home subject to supervision and return to the court for violation of probation at any time during the period of probation.

(m) "Protective supervision" means a legal status created by court order in neglect cases whereby the minor is permitted to remain in his home under supervision, subject to return to the court during the period of protective supervision.

(n) "Delinquent act" means an act designated a crime under the law of this State, or of another State if the act occurred in another State, or under Federal law. Traffic offenses shall not be deemed delinquent acts except for violations of ______________.

(o) "Delinquent child" means a child who has committed a delinquent act and is in need of care or rehabilitation.

(p) "person in need of supervision" means a child who:

(1)being subject to compulsory school attendance, is habitually truant from school; or

(2) habitually disobeys the reasonable and lawful demands of his parents, guardian or other custodian, and is ungovernable and beyond their control; or

(3) has committed an offense not classified as criminal or one applicable only to children, and

(4) in any of the foregoing, is in need of care or rehabilitation.

(q) "Neglected child" means a child:

(1) who has been abondoned by his parents, guardian, or other custodian;

(2) who is without proper parental care and control, or subsistence, education, medical or other care or control necessary for his well-being because of the faults or habits of his parents, guardian, or other custodian or their neglect or refusal, when able to do so, to provide them, or

(3) whose parents, guardian, or other custodian are unable to discharge their responsibilities to and for the child because of incarceration, hospitalization, or other physical or mental incapacity; or

(4) who has been placed for care or adoption in violation of law.

(r) "Custodian" means a person, other than a parent or legal guardian, to whom legal custody of the child has been given by court order or who is acting in loco parentis.

(s) The singular includes the plural, the plural the singular, and the masculine the femine, when consistent with the intent of this Act.

Section 3. The Family Court Division.

The family court shall be a division of (   ).

Section 4. Referrees.

(a) The (   ) may appoint one or more persons to serve as referees on a full- or part-time basis. They shall be members of the bar. Their compensation shall be fixed by the (   ) with the approval of the (   ) and paid out of the general revenue funds of the (   ).

(b) Hearings shall be conducted only by a judge, of:

(1) the hearing is contested;

(2) the hearing is one to determine whether a case shall be transferred for criminal prosecution as provided in Section 31; or

(3) a party objects to the hearing being held by a referee.

Otherside, the (   ) may direct that hearings in any case or class of cases shall be conducted in the first instance by a referee in the manner provided for by this Act.

(c) Upon the conclusion of a hearing before a referee, he shall transmit his findings and recommendations for disposition in writing to the judge. Prompt written notice of the findings and recommendations together with copies thereof shall be given to the parties to the proceeding. The written notice shall also inform them of the right to a rehearing before the judge.

(d) A rehearing may be ordered by the judge at any time and shall be ordered if any party files a written request therefor within 3 days after the referee's written notice. If a hearing de novo is not requested by any party or ordered by the court, the hearing shall be upon the same evidence heard by the referee, provided that new evidence may be admitted in the discretion of the judge.

(e) If a hearing before the judge is not requested or ordered or the right thereto is waived, the findings and recommendations of the referee, when confirmed by an order of the judge, shall become the decree of the court.

Section 3. Probation Services.

The (   ) shall establish a statewide program of probation and other casework and clinical services to serve the court, the cost thereof to be paid out of the general revenue funds of the State.

All employees shall be selected, appointed, and promoted through a State merit system.

Section 6. Powers and Duties of Probation Officers and Social Services Personnel.

(a) For the purpose of carrying out the objectives and provisions of this Act, and subject to the limitations of this Act, probation and social services personnel have the power and duty to:

(1) receive and examine complaints and allegations that a child is neglected, delinquent, or in need of supervision for the purpose of considering the commencement of proceedings under this Act;

(2) make appropriate referrals of cases presented to him as such officer, to other private or public agencies of the community where their assistance appears to be needed or desirable;

(3) make predisposition studies and submit reports and recommendations to the court as required by this Act;

(4) supervise and assist a child placed on probation or under his supervision by order of the court;

(5) provide marital and family counseling;

(6) perform such other functions as are designated by this Act or by rules of court pursuant thereto;

(b) For the purposes of this Act, a probation officer shall have the power to take into custody and place in temporary care a child who is under his supervision as a delinquent or neglected child, or a child in need of supervision when the probation officer has reasonable cause to believe that the child has violated the conditions of his probation or that he may flee from the jurisdiction of the court. A probation officer does not have the powers of a law enforcement officer nor may he sign a petition under this Act with respect to a person who is not on probation or otherwise under his supervision.

(c) If a probation officer takes a child into custody, he shall proceed as provided for in Sections 23 and 39.

Section 7. Jurisdiction: Children.

(a) The family court shall have exclusive original jurisdiction of the following proceedings which shall be governed by the provisions of this Act:

(1) proceedings in which a child is alleged to be delinquent or neglected or a person in need of supervision.

(b) The family court shall also have exclusive original jurisdiction of the following proceedings, which shall be governed by the laws relating thereto without regard to the other provisions of this Act:

(1) the termination of parental rights;

(2) proceedings for the adoption of an individual of any age;

(3) proceedings under the Interstate Compact on Juveniles;

(4) proceedings under the Interstate Compact on the Placement of Children;

(5) proceedings to determine the custody or to appoint a legal custodian or a guardian of the person of a minor; and

(6) proceedings for the commitment of a mentally retarded or mentally ill minor.

Section 8. Transfer from Other Courts.

(a) If it appears to a court during the pendency of a criminal charge and prior to the entry of a judgment of conviction and order of sentence, that a minor defendant was under the age of 18 years at the time of the alleged offense, the court shall forthwith transfer the case, together with all papers and documents connected therewith, to the family court. All action taken by the court prior to transfer of the case shall be deemed null and void unless the family court transfers under Section 31.

(b) If at the time of the alleged offense the minor charged was under the age of 18 years but this fact is not discovered by the court until after entry of a judgment of conviction and order of sentence, the court may elect to retain jurisdiction and permit the conviction and sentence to stand or dispose of the case as provided for in Section 34, or transfer the case to the family court.

Section 9. Retention of Jurisdiction.

For the purposes of this Act, jurisdiction obtained by the court in the case of a child shall be retained by it until he becomes 21 years of age, unless terminated prior thereto. This section does not affect the jurisdiction of other courts over offenses committed by the child after he reaches the age of 18 years.

If a minor already under jurisdiction of the court is convicted in a criminal court of a crime committed after the age of 18, the conviction shall terminate the jurisdiction of the family court.

Section 10. Jurisdiction: Minors; Adults.

The court shall have exclusive original jurisdiction:

(a) To try any offense committed against a child by his parent, guardian, or any other minor or adult having his legal or physical custody;

(b) To try any minor or adult charged with:

(1) deserting, abondoning, or failing to provide support for any person in violation of law;

(2) an offense, other than a felony, committed by one spouse against the other.

In any case within subsections (a) or (b) (1) or (b) (2), the court in its discretion may transfer the proceedings to a court which has criminal jurisdiction of the offense charged.

(c) In proceedings for support, alimony, divorce, separation and annulment, and to establish paternity of a child born out of wedlock;

(d) In proceedings under the Uniform Reciprocal Enforcement of Support Act;

(e) In proceedings to commit an adult found to be mentally ill.

Section 11. Venue.

Proceedings under this Act shall be commenced in the county where the child resides. If delinquency or in need of supervision is alleged, they may also be commenced in the county where the acts constituting the alleged delinquency or in need of supervision occurred. If neglect is alleged, they may also be brought in the county where the child is present when the proceedings are commenced.

Section 12. Transfer to Another Family Court within the State.

If the child resides in a county of the State and the proceeding is commenced in a court of another county, that court, on its own motion or a motion of a party made at any time prior to final disposition may transfer the proceeding to the county of the child's residence for such further action or proceedings as the court receiving the transfer may deem proper. Like transfer may be made if the residence of the child changes pending the proceeding. The proceeding shall be so transferred if the child has been adjudicated delinquent or in need of supervision and other proceedings involving the child are pending in the family court of the county of his residence.

Certified copies of all legal and social records pertaining to the case shall accompany the transfer.

Section 13. Petition--Preliminary Inquiry--Authorization to File.

(a) Complaints alleging delinquency, neglect, or in need of supervision shall be referred to the intake office of probation services. The intake officer shall conduct a preliminary inquiry to determine whether the best interests of the child or of the public require that a petition be filed. If judicial action appears necessary, the intake office may recommend tha filing of a petition, provided, however, that all petitions shall be prepared and countersigned by the ( ) before they are filed with the court. Decisions of the ( ) on whether to file a petition shall be final.

(b) If the intake office refuses to authorize a petition, the complainant in such situations shall be notified by the intake office of his right to review of his complaint by the ( ). The ( ), upon request of the complainant, shall review the facts presented by the complainant and after consultation with the intake office shall authorize, countersign, and file the petition with the court when he believes such action is necessary to protect the community or interests of the child.

(c) When a child is in detention or shelter care and the filing or a petition is not approved by the ( ), the child shall be immediately released.

(d) The intake office of probation services shall have the authority to refer the case to an appropriate public or private agency or to conduct conferences for the purposes of affecting adjustments or agreements which will obviate the necessity for filing a petition.

During such inquiries, a party may not be compelled to appear at any conference, to produce any papers, or to visit any place. Such inquiries and conferences shall not extend for a period beyond 30 days from the date the complaint was made.

(e) On motion by or in behalf of a child, a petition alleging delinquency or need of supervision shall be dismissed with prejudice if it was not filed within 10 days from the date the complaint was referred to the intake office of probation services.

Section 14. Petition--Who May Sign--Content.

(a) Subject to subsection (b) of this section, and except as provided in Section 6, petitions initiating court action and probation revocation petitions may be signed by any person who has knowledge of the facts alleged or is informed of them and believes that they are true.

(b) A minor in need of supervision petition may be signed only by one of the following persons: a representative of a public or nongovernmental agency licensed or authorized to provide care or supervision of children; a representative of a public or private agency providing social service for families; a school official; or a law enforcement officer.

(c) The (   ) shall represent the petitioner in all proceedings where the petition alleges delinquency, neglect, or in need of supervision.

(d) Petitions shall be entitled, "In the Matter of ______, a child," and shall be verified by the person who signs it.

(e) Petitions shall set forth with specificity:

(1) the facts which bring the child within the provisions of subsection (a) (1) of Section 7, together with a statement when

delinquency or in need of supervision is alleged that the child is in need of supervision, care, or rehabilitation;

(2) the name, birth date, and residence address of the child;

(3) the names and residence addresses of his parents, guardian, or custodian, and spouse if any. If neither of his parents, guardian or custodian resides or can be found within the State, or if their residence addresses are unknown, the name of any known adult relative residing within the State, or, if there be none, the known adult relative residing nearest to the court;

(4) whether the child is in custody, and, if so, the place of detention and the time he was taken into custody; and

(5) when any of the facts herein required are not known, the petition shall so state.

Section 15. Summons.

(a) After a petition has been filed, the court shall direct the issuance of summonses, one directed to the child, if he is 14 or more years of age or is alleged to be delinquent or in need of supervision, and another to the parents, guardian, or other custodian, and such other persons as appear to the court to the proper or necessary parties to the proceedings, requiring them to appear personally before the court at the time fixed to answer the allegations of the petition. Where the custodian is summoned, the parent or guardian or both shall also be served with a summons. If the child is married, the spouse shall also be served with a summons.

(b) The summons shall advise the parties of their right to counsel as provided in Section 25. A copy of the petition shall be attached to each summons.

(c) The judge may endorse upon the summons an order directing the parents, guardian, or other custodian having the custody or control of the child to bring the child to the hearing.

(d) If it appears, from affidavit or sworn statement presented to the judge, that the child needs to be placed in detention or shelter care pursuant to Section 20, the judge may endorse upon the summons an order that an officer serving the summons shall at once take the child into custody and take him to the place of detention or shelter care designated by rules of court.

(e) A party, other than the child, may waive service of summons by written stipulation or by voluntary appearance at the hearing.

Section 16. Service of Summons.

(a) If a party to be served with a summons can be found within the State, the summons shall be served upon him personally at least 24 hours before the hearing. If he is within the State and cannot be found, but his address is known or can with reasonable deligence be ascertained, the summons may be served upon him by mailing a copy thereof by certified mail at least 5 days before the hearing. If he is without the State but he can be found or his address is known, or can with reasonable diligence be ascertained, service of the summons may be made either by delivering a copy thereof to him personally or by mailing a copy thereof to him by certified mail.

If after reasonable effort he cannot be found or his post office address ascertained, whether he is within or without a State, the court may order service of the summons upon him by publication in accordance with the provisions of (   ) in which event the hearing shall not be less than 5 days after the date of last publication.

(b) Service of summons may be made under the direction of the court by any law enforcement officer or other suitable person.

(c) The court may authorize the payment from (   ) funds of the costs of service and of necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

Section 17. Time Limitations.

(a) On motion by or in behalf of a child, a delinquency or need of supervision petition shall be dismissed with prejudice where the allegations of the petition are not determined by an admission, or a hearing on the allegations of the petition not commenced within:

(1) 10 days from the date the petition is filed where a child in custody is denied unconditional release at his detention hearing;

(2) 20 days from the date the petition is filed where a child once in custody for the offense charged in the petition or an offense based upon the same conduct, is released at or before his detention hearing;

(3) 20 days from the date the petition is filed where the child was never in custody for the offense charged in the petition or an offense based upon the same conduct; or

(4) within either 10 days or 20 days from the time the child was taken into custody as provided in subsections (a) (1) or (a) (2) in cases where the summons directs that the child be taken into custody by the officer serving the summons, and the child has not previously been in custody for the offense charged in the petition or an offense based upon the same conduct.

(b) The following periods shall be excluded in computing the time for a hearing on the allegations in the petition:

(1) The period of delay resulting from other proceedings concerning the child, including but not limited to an examination and hearing related to mental health, prehearing motions, waiver motions, and hearings on other matters.

(2) The period of delay resulting from a continuance granted at the request or with the consent of the child and his counsel.

(3) The period of delay resulting from a continuancy granted at the request of the (   ) if the continuance is granted because of the unavailability of evidence material to his case, when the (   ) has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will be available at the later date; or the continuance is granted to allow the (   ) additional time to prepare his case and additional time is justified because of the exceptional circumstances of the case.

(4) The period of delay resulting from the imposition of a consent decree.

(5) The period of delay resulting from the absence or unavailability of the child.

(6) A reasonable period of delay when the child is joined for a hearing with another child as to whom the time for a hearing has not run and there is good cause for not hearing the cases separately. In all other cases, the child's case shall be separated from the hearing of another child alleged to have participated in the same offense so that a hearing may be held within the time limits applicable to him.

(7) Other periods of delay for good cause.

Section 18. Taking into Custody.

A child may be taken into custody:

(1) Pursuant to the order of the court under Sections 15 and 21;

(2) For a delinquent act pursuant to the laws of arrest;

(3) By a law enforcement officer when he has reasonable grounds to believe that the child is suffering from illness or injury or in immediate danger from his surroundings, and that his removal is necessary; and

(4) By a law enforcement officer when he has reasonable grounds to believe that the child has run away from his parents, guardian, or other custodian.

Section 19. Detention and Shelter Care Facitiltes.

(a) The (   ) shall develop a statewide plan for the establishment of regional detention facilities for children referred to or under the jurisdiction of the court, and necessary transportation. To implement this plan, the (   ) may construct and operate the facilities or may contract for the use of detention facilities established or operated by local authorities.

(b) The (   ) shall promulgate standards for all detention facilities, including location, design, construction, equipment, care, program, personnel, and clinical services. The (   ) may establish a system of subsidies for the construction and operation, by local authority, of detention facilities meeting the standards established.

(c) To determine whether the standards are being met, at least once a year, the (   ) shall inspect all facilities in which children are detained and shall require reports from them. By order approved by the (   ) the director may prohibit the detention of children in any place which does not meet its standards. Copies of such orders shall be served upon the person in charge of the detention facility and filed with the family court.

(d) The (   ) shall develop a statewide program for the provision of shelter care facilities for children referred to or under the jurisdiction of the court. When such a program involves the use of local public or nongovernmental facilities, the duties and responsibilities of (   ) with respect to such facilities shall include those provided for in subsections (b) and (c).

(e) All facilities used for detention not under the administration of (   ) shall submit a yearly report to (   ) the substance and form of which shall be determined by (   ).

Section 20. Criteria for Detaining Children.

(a) Unless ordered by the court pursuant to the provisions of this Act, a child taken into custody shall not be placed or retained in detention or shelter care prior to the court's disposition unless detention or shelter care is required:

(1) to protect the person or property of others or of the child; or

(2) because he has no parent, guardian, custodian, or other person able to provide supervision and care for him; or

(3) to secure his presence at the next hearing.

(b) The criteria for detention or placement in shelter care in subsection (a) shall govern the decision of all persons responsible for determining whether detention of shelter care is warranted prior to the court's disposition.

Section 21..Release or Delivery to Court.

(a) A person taking a child into custody shall, with all reasonable speed:

(1) release the child to his parents, guardian, or custodian and issue verbal counsel or warning as may be appropriate;

(2) release the child to his parents, guardian, or custodian upon their promise to bring the child before the court when requested by the court, unless his placement in detention or shelter care appears required as provided in Section 20; or

(3) bring the child to the intake office of probation services or deliver the child to a place of detention or shelter care designated by the court or to a medical facility if the child is believed to be suffering from a serious physical condition or illness which requires either prompt treatment or prompt diagnosis for evidentiary purposes, and promptly give written notice thereof, together with a statement of the reason for taking the child into custody, to a parent, guardian, or other custodian and to the court.

Any questioning of the child necessary to comply with subsection (a) (2) shall conform to the place, procedures and conditions prescribed by this Act and rules of court pursuant therein.

(b) When a child is delivered to the intake office of probation services or to a place of detention or shelter care designated by the court, an intake officer of probation services shall, prior to admitting the child for care, review the need for detention or shelter care and shall release the child unless detention or shelter care is required under Section 20 or has been ordered by the court pursuant to Section 15.

(c) If a parent, guardian, or other custodian fails, when requested, to bring the child before the court as provided in subsection (a) (2), the court may issue its warrant directing that the child be taken into custody and brought before the court.

Section 22. Place of Detention or Shelter.

(a) A child alleged to be delinquent or in need of supervision may be detained, pending court hearing, in the following places:

(1) a licensed foster home or a home otherwise authorized by law to provide such care;

(2) a facility operated by a licensed child welfare agency;

(3) a detention home for children alleged to be delinquent or in need of supervision provided for in Section 19; or

(4) any other suitable place designated by the court subject to the provisions of Section 19 of this Act, provided that no place of detention or shelter care may be designated if it is a facility to which children adjudicated delinquent or in need of supervision may be committed under this Act.

(b) A child may be detained in jail or other facility for the detention of adults only if the facility in subsection (a) (3) is unavailable; the detention is in a room separate and removed from those adults;

adequate supervision is provided; and facility is approved under the provisions of Section 19; and the court finds that public safety and protection reasonably require such detention. The use of a jail or other facility for the detention of adults may not continue beyond (   ).

(c) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately when a child, who is or appears to be under the age of 18 years, is received at the facility, and shall deliver him to the court upon request, or transfer him to a detention facility designated by the court.

(d) When a case is transferred to another court for criminal prosecution, the child shall be transferred to the appropriate officer or detention facility in accordance with the law governing the detention of such person charged with crime.

(e) A child alleged to be neglected may be detained or placed in facilities for shelter care enumerated in subsections (a) (1), (a) (2), and (a) (4), and shall not be detained in a jail or other facility intended or used for the detention of adults charged with criminal offenses or for children alleged to be delinquent.

Section 23. Release from Detention or Shelter Care--Hearing--
Conditions of Release.

(a) When a child is not released as provided in Section 21:

(1) a petition shall be filed within 24 hours, excluding Sundays and legal holidays; and

(2) a detention or shelter care hearing shall be held within 24 hours (excluding Sundays and legal holidays) from the time of

filing the petition to determine whether continued detention or shelter care is required pursuant to Section 20.

(b) Notice of the detention or shelter care hearing, either oral or written, stating the time, place, and purpose of the hearing shall be given to the parent, guardian, or custodian if they can be found and to the child if delinquency or need of supervision is alleged.

(c) At the commencement of the detention or shelter care hearing, the judge shall advise the parties of the right to counsel provided in Section 25, and shall appoint counsel as required. The parties shall be informed of the child's right to remain silent with respect to any allegation of delinquency or need of supervision. They shall also be informed of the contents of the petition, and shall be given an opportunity to admit or deny the petition's allegations.

(d) When the judge finds that a child's full-time detention or shelter care is not required, the court shall order his release, and in so doing, may impose one or more of the following conditions singly or in combination:

(1) place the child in the custody of a parent, guardian, or custodian under their supervision, or under the supervision of an organization agreeing to supervise him;

(2) place restrictions on the child's travel, association, or place of abode during the period of his release; or

(3) impose any other condition deemed reasonably necessary and consistent with the criteria for detaining children specified in Section 20, including a condition requiring that the child return to custody as required.

(e) An order releasing a child on any conditions specified in this section may at any time be ammended to impose additional or different conditions of release or to return the child to custody for failure to conform to the conditions originally imposed.

(f) All relevant and material evidence helpful in determining the need for detention or shelter care may be admitted by the court even though not competent in a hearing on the petition.

(g) If the child is not released and a parent, guardian or other custodian has not been notified and did not appear or waive appearance at the hearing, upon his filing his affidavit stating these facts, the court shall rehear the matter without unnecessary delay.

Section 24. Subpoena.

Upon application of a party, the clerk of the court shall issue, and the court on its own motion may issue, subpoenas requiring attendance and testimony of witnesses and production of records, documents or other tangible objects at any hearing.

Section 25. Right to Counsel.

(a) In delinquency and in need of supervision cases, a child and his parents, guardian, or custodian shall be advised by the court, or its representative that the child shall be represented by counsel at all stages of the proceedings. If counsel is not retained for the child, or if it does not appear that counsel will be retained, counsel shall be appointed for the child.

(b) In neglect cases, the parents, guardian, or custodian shall be informed of their right to be represented by counsel and, upon request, counsel shall be appointed where the parties are unable, for financial reasons, to retain their own, or where in the court's discretion, appointment of counsel is required in the interests of justice.

Section 26. Admissibility of Child's Preliminary Statements.

Unless advised by counsel, the statements of a child made while in custody of police or law enforcement officers or made to the ( ) or probation officer during the processing of the case, including statements made during a preliminary inquiry, predisposition study or consent decree, shall not be used against the child prior to a determination of the petition's allegations in a delinquency or need of supervision case or in a criminal proceeding prior to conviction.

Section 27. Prohibition against Double Jeopardy.

Criminal proceedings and other juvenile proceedings based upon the offense alleged in the petition or an offense based upon the same conduct is barred where the court has begun taking evidence or where the court has accepted a child's plea of guilty to the petition.

Section 28. Other Basic Rights.

A child charged with a delinquent act or alleged to be in need of supervision shall be accorded the privilege against self-incrimination. An extra-judicial statement which would be constitutionally inadmissible in a criminal proceeding shall not be received in evidence over objection. Evidence illegally seized or obtained shall not be received in evidence over to objection to establish the allegations against him. An extra-judicial admission or confession made by the child out of court is insufficient to support a finding that the child committed the acts alleged in the petition unless it is corroborated by other evidence.

(a) Hearings under this Act shall be conducted by the court without a jury and separate from other proceedings not included in Section 7 (a) (1).

(b) The proceedings shall be recorded by stenographic notes or by electronic, mechanical or other appropriate means. If not so recorded, full minutes of the proceedings shall be kept by the court.

(c) Except in hearings to declare a person in contempt of court, the general public shall be excluded from hearings under Section 7 (a) (1) and only the parties, their counsel, witnesses and other persons court finds to have a proper interest in the case or in the work of the court, including members of the bar and press, may be admitted by the court on condition that such persons refrain from divulging any information which would identify the child or family involved. If the court finds that it is in the best interest of the child, his presence may be temporarily excluded from the hearings except while allegations of delinquency or need of supervision are being heard.

Section 30. Predisposition Study and Report.

(a) After a petition has been filed pursuant to Section 7 (a) (1), the court shall direct that a predisposition study and report to the court be made in writing by a probation officer or another agency authorized by law, concerning the child, his family, his environment, and other matters relevant to the need for treatment or disposition of the case. The study and report shall not be made prior to a finding with respect to the allegations in the petition unless a notice of intent to admit the allegations is filed, and the party consents thereto.

(b) Where there are indications that the child may be mentally ill or mentally retarded, the court, on motion by the ( ) or that of counsel for the child, may order the child to be examined at a suitable place by a physician, psychiatrist, or psychologist prior to a hearing on the merits of the petition. Such examinations made prior to hearing or as part of the study provided for in subsection (a) of this section shall be conducted on an outpatient basis unless the court finds that placement in a hospital or other appropriate facility is necessary.

(c) The court, after hearing, may order examination by a physician, surgeon, psychiatrist, or psychologist of a parent or custodian who gives his consent and whose ability to care for or supervise a child before the court is at issue.

Section 31. Transfer to Criminal Court.

(a) The (   ) may, within 5 days of the date a delinquency petition has been filed and before a hearing on the petition on its merits, and following consultation with probation services, file a motion requesting the court to transfer the child for criminal prosecution if:

(1) the child was 16 or more years of age at the time of the conduct charged, and is alleged to have committed an act which would constitute a felony if committed by an adult; or

(2) the child is 16 or more years of age and is already under commitment to an agency or institution as a delinquent; or

(3) a minor 18 years of age or older is alleged to have committed the delinquent act prior to having become 18 years of age.

(b) Following the filing of the motion of the (   ), summonses shall be issued and served in conformity with the provision of

Sections 15 and 16. A copy of the motion and a copy of the delinquency petition, if not already served, shall be attached to each summons.

(c) The court shall conduct a hearing on all such motions for the purpose of determining whether there are reasonable prospects of rehabilitating the child prior to his majority. If the court finds that there are not reasonable prospects for rehabilitating the child prior to his majority and there are no reasonable grounds to believe he is committable to an institution or agency for the mentally retarded or mentally ill, it shall order the case transferred for criminal prosecution.

(d) When there are grounds to believe that the child is committable to an institution or agency for the mentally retarded or mentally ill, the court shall proceed as provided in Section 40 (b).

(e) Evidence of the following factors shall be considered in determining whether there are reasonable prospects for rehabilitating a child prior to his majority:

(1) the nature of the present offense and the extent and nature of the child's prior delinquency record;

(2) the nature of past treatment efforts and the nature of the child's response to past treatment efforts; and

(3) the techniques, facilities and personnel available to the court for rehabilitation.

(f) Prior to a hearing on the motion by the (   ), a study and report to the court, in writing, relevant to the factors in subsection (e) (1), (2), and (3) shall be made by the probation services or a qualified agency designated by the court.

(g) When a child is transferred for criminal prosecution, the court shall set forth in writing its reasons for finding that there are no reasonable prosepcts for rehabilitating a child prior to his majority.

(h) Transfer of a child 16 years of age or older for criminal prosecution terminates the jurisdiction of the family court over the child with respect to any subsequent delinquent acts.

(i) A judge who conducts a hearing pursuant to this section shall not, over the objection of the child whose prospects for rehabilitation were at issue, participate in any subsequent proceedings relating to the offense.

Section 32. Hearing--Findings--Dismissal.

(a) The parties shall be advised of their rights under law in their first appearance at intake and before the court. They shall be informed of the specific allegations in the petition and given an opportunity to admit or deny such allegations.

(b) If the allegations are denied, the court shall proceed to hear evidence on the petition. The court shall record its findings on whether or not the child is neglected child or if the petition alleges delinquency or need of supervision, as to whether or not the acts ascribed to the child were committed by him. If the court finds that the allegations in the petition have not been established, it shall dismiss the petition and order the child discharged from any detention or temporary care theretofore ordered in the proceeding.

(c) If the court finds on the basis of a valid admission or a finding on proof beyond a reasonable doubt, based upon competent, material, and relevant evidence, that a child committed the acts by reason of which he is alleged to be delinquent, or in need of supervision, it may, in the absence of objection, proceed immediately to hear evidence as to whether the child is in need of care or rehabilitation and to file its findings thereon. In the absence of evidence to the contrary, evidence of the commission of an act which constitutes a felony is sufficient to sustain a finding that the child is in need of care or rehabilitation. If the court finds that the child is not in need of care or rehabilitation, it shall dismiss the proceedings and discharge the child from any detention or other temporary care theretofore ordered.

(d) If the court finds from clear and convincing evidence , compotent, material, and relevant in nature, that the child is neglected, and from clear and convincing evidence, relevant and material in nature that the child is in need of care or rehabilitation as a delinquent child, or child in need of supervision, the court may proceed immediately or at a postponed hearing to make proper disposition of the case.

(e) In disposition hearings all relevant and material evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value, even though not competent in a hearing on the petition. The parties or their counsel shall be afforded an opportunity to examine and controvert written reports so received and to cross-examine individuals making reports when reasonably available, but sources of confidential information need not be disclosed.

(f) On its motion or that of a party, the court may continue the hearings under this section for a reasonable period to receive reports and other evidence bearing on the disposition or need for care or rehabilitation. In this event, the court shall make an appropriate order for detention or temporary care of the child or his release from detention or temporary care subject to supervision of the court during the period of the continuance.

Section 33. Continuance under Supervision without Adjudication-- Consent Decree.

(a) At any time after the filing of a delinquency or need of supervision petition and before the entry of an adjudication order, the court may, on motion of the (   ) or that of counsel for the child, suspend the proceedings, and continue the child under supervision in his own home, under terms and conditions negotiated with probation services and agreed to by all parties affected. The court's order continuing the child under supervision shall be known as a consent decree.

(b) Where the child objects to a consent decree, the court shall proceed to findings, adjudication and disposition. Where the child does not object, but an objection is mady by the (   ) after consultation with probation services, the court shall, after considering the objections and reasons therefor, proceed to determine whether it is appropriate to enter a consent decree.

(c) A consent decree shall remain in force for 6 months unless the child is discharged sooner by probation services. Upon application of probation services or other agency supervising the child, made before expiration of the 6-month period, a consent decree may be extended by the court for an additional 6 months.

(d) If prior to discharge by the probation services or expiration of the consent decree, a new delinquency or in need of supervision petition is filed against the child, or the child otherwise fails to fulfill express terms and conditions of the decree, the petition under which the child was continued under supervision may, in the discretion of the ( ) following consultation with probation services, be reinstated and the child held accountable just as if the consent decree had never been entered.

(e) A child who is discharged by the probation services, or who completes a period of continuance under supervision without reinstatement of the original delinquency or need of supervision petition, shall not again be proceeded against in any court for the same offense alleged in the petition or an offense based upon the same conduct.

(f) A judge who, pursuant to this section, elecits or examines information or material about a child which would be inadmissible in a hearing on the allegations in the petition shall not, over the objection of the child, participate in any subsequent proceedings on the delinquency or in need of supervision petition if:

(1) a consent decree is denied and the allegations in the petition remain to be decided in a hearing where the child denies his guilt; or

(2) a consent decree is granted but the delinquency or in need of supervision petition is subsequently reinstated under subsection (d).

Section 34. Disposition of Neglected Child--Delinquent Child--Child in Need of Supervision.

(a) If a child is found to be neglected, the court may make any of the following orders of disposition to protect the welfare of the child:

(1) permit the child to remain with his parents, guardian, or other custodian, subject to such conditions and limitations as the court may prescribe;

(2) place the child under protective supervision;

(3) transfer legal custody to any of the following--

(A) a State or local public agency responsible for the care of neglected children,

(B) a child-placing agency or other private organization or facility willing and able to assume the education, care, and maintenance of the child at no expense to the public, and which is licensed or otherwise authorized by law to receive and provide care for such child,

(C) a relative or other individual who, after study by the probation services or other agency designated by the court, is found by the court to be qualified to receive and care for the child.

(b) Unless a child found neglected shall also be found to be delinquent, he shall not be committed to or confined in an institution established for the care and rehabilitation of delinquent children.

(c) If a child is found to be a delinquent or in need of supervision, the court may make any of the following orders of disposition for his supervision, care, and rehabilitation:

(1) any order which is authorized by subsection (a) of this section for the dispostion of a neglected child;

(2) transfer legal custody to a State or local public agency responsible for the care of delinquent children;

(3) place the child on probation under such conditions and limitations as the court may prescribe.

(d) No delinquent child by virtue of such adjudication shall be committed or transferred to a penal institution or other facility used for the execution of sentences of persons convicted of a crime.

(e) No child found to be in need of supervision, unless also found to be delinquent, shall be committed to or placed in an institution or facility established for the care and rehabilitation of delinquent children unless such child is again alleged to be a child in need of supervision and the court, after hearing, so finds.

(f) Whenever the court vests legal custody in an agency, institution or department, it shall transmit with the order copies of the clinical reports, predisposition study, and other information it has pertinent to the care and treatment of the child.

Section 35. Order of Adjudication Noncriminal.

An order of disposition or other adjudication in proceedings under this Act shall not be deemed a conviction of crime or impose any civil disabilities ordinarily resulting from a conviction or operate to disqualify the child in any civil service application or appointment.

The disposition of a child and evidence given in a hearing in the family court shall not be admissible as evidence against him in any case or proceeding in any other court whether before or after reaching majority except in sentencing proceedings after conviction of a felony for the purposes of a presentence study and report.

Section 36. Service by Publication--Interlocutory Order of Disposition.

(a) If service of summons upon a party is made by publication, the court may conduct a provisional hearing upon the allegations of the petition and enter an interlocutory order of disposition if:

(1) the petition alleges delinquency, in need of supervision, or neglect of the child;

(2) the summons served upon any party

(A) states that prior to the final hearing on the petition designated in the summons a provisional hearing thereon will be held at a specified time and place,

(B) requires the party served to appear and answer the allegations of the petition at such hearing,

(C) states further that findings of fact and orders of disposition made pursuant to the provisional hearing will become final at the final hearing unless the party served by publication appears at the final hearing, and

(D) otherwise conforms to the provisions of Section 15, and

(3) the child is personally before the court at the provisional hearing on petitions alleging delinquency and in need of supervision. The court may waive the presence of the child in neglect cases.

(b) All provisions of this Act applicable to a hearing on a petition and to orders of disposition and to other proceedings dependent thereon shall apply to proceedings under this section, but findings of fact and orders of disposition shall have only interlocutory effect pending the final hearing on the petition and the rights and duties of the party served by publication shall not be affected except as provided in subsection (c).

(c) If the party served by publication fails to appear at the final hearing on the petition, the findings of fact and interlocutory orders made shall become final without further evidence and shall be governed by the provisions of this Act as if made at the final hearing. If such party appears at the final hearing, such findings and orders shall be vacated and disregarded and the hearing shall proceed upon the allegations of the petition as otherwise provided by this Act without regard to this section.

Section 37. Limitation of Time on Dispositional Orders.

(a)

(1) An order vesting legal custody of a child in a department, agency, or institution shall remain in force for an indeterminate period not exceeding 1 year from the date entered, provided, however, that the child shall be released within the 1-year period by the department, institution, or agency when it appears that the purpose of the order has been achieved.

(2) An order vesting legal custody of a child in an individual shall remain in force for 1 year from the date entered unless sooner terminated by court order.

(3) An order of probation or protective supervision shall remain in force for an indeterminate period not exceeding 1 year from the date entered, provided, however, such protection or supervision shall be terminated within the 1-year period by probation services or agency providing the supervision when it appears that the purpose of the order has been achieved.

(b)

(1) Prior to the expiration of an order transferring legal custody, the court may extend the order for an additional period of 1 year if it finds after a hearing, pursuant to Section 38, that the extension is necessary to safeguard the welfare of the child or the public interest.

(2) Prior to the expiration of an order of probation or protective supervision, the court may extend it for an additional period of 1 year after a hearing pursuant to Section 38 if it finds that the extension is necessary to protect the community or to safeguard the welfare of the child.

(c) When a child reaches 21 years of age, all orders affecting him then in force terminate.

(d) A release or termination, and the reasons therefor, made under subsections (a) (1) and (a) (3) of this section shall be promptly reported to the court in writing.

Section 38. Modification--Termination or Extension of Court Orders.

(a) At any time prior to expiration, an order vesting legal custody or an order of protective supervision made by the court in the case of a child may be modified, revoked, or extended on motion by:

(1) a child, whose legal custody has been transferred to an institution, agency, or person, requesting the court for a modification or termination of the order alleging that he is no longer in need of commitment and the institution, agency, or person has denied application for release of the child or has failed to act upon the application within a reasonable time; or

(2) an institution, agency, or person vested with legal custody or responsibility for protective supervision requesting the court for an extension of the order on the grounds that such action is necessary to safeguard the welfare of the child or the public interest.

(b) The court may dismiss the motions filed under subsection (a) of this section if, after preliminary investigation, it finds that they are without substance. If it is of the opinion that the order should be reviewed, it may, upon due notice to all necessary parties as prescribed by rules of court, proceed to a hearing in the manner provided for in this Act. It may thereupon terminate the order if it finds the child is no longer in need of care, supervision, or rehabilitation, or it may enter an order extending or modifying the original order if it finds such action necessary to safeguard the child or the public interest.

Section 39. Probation Revocation--Disposition.

(a) A child on probation incident to an adjudication as a delinquent or minor in need of supervision who violates a term of his probation may be proceeded against in a probation revocation hearing.

(b) A proceeding to revoke probation shall be commenced by the filing of a petition labeled "Petition to Revoke Probation." Except as otherwise provided, petitions to revoke probation shall be screened, reviewed and prepared in the same manner and shall contain the same information as provided in Sections 13 and 14. The petition shall recite the date that the child was placed on probation and shall state the time and manner in which notice of the terms of probation were given.

(c) Probation revocation proceedings shall require clear and convincing evidence. In all other respects, proceedings to revoke probation shall be governed by the procedures, rights and duties applicable to delinquency and in need of supervision cases contained in this Act.

(d) If a child is found to have violated a term of his probation pursuant to a probation revocation hearing, the court may extend the period of probation or make any other order of disposition specified for a child adjudicated delinquent in Section 34.

Section 40. Disposition of Mentally Ill or Mentally Retarded Child.

(a) If, at a hearing to determine whether a child is neglected or in need of care or rehabilitation, as a delinqent child or person in need of supervision, pursuant to Section 32, the evidence indicates that the child is mentally retarded or mentally ill, the court may order the child detained if required pursuant to Section 20, and shall direct the ( ) to initiate proceedings under Section 7 (b) (6).

(b) If, at a hearing under subsection (a), the evidence indicates that the child may be suffering from mental retardation or mental illness, the court may commit the child for a period not exceeding 30 days to an appropriate institution or agency for further study and a report on the child's condition. If it appears therefrom that the child is committable under the laws of this State as a mentally retarded or mentally ill person, the court may order the child detained if required pursuant to Section 20, and shall direct the ( ) to initiate commitment proceedings under Section 7 (b) (6).

(c) In the event the child is committed as a mentally retarded or mentally ill child, the petition alleging delinquency or in need of supervision or neglect shall be promptly dismissed.

Section 41. Guardian Ad Litem--Guardian of the Person.

(a) The court, at any stage of proceeding under this Act, may appoint a guardian ad litem for a child who is a party to the proceeding, if he has no parent or guardian or custodian appearing on his behalf or their interests conflict with those of the child. A party to the proceeding or his employee or representative shall not be so appointed.

(b) The court, in any proceeding under this Act shall appoint a guardian of the person for a child in any case where it finds that the child does not have a natural or adoptive parent in a position to exercise effective guardianship or a legally appointed guardian of his person. No officer or employee of a State or local public agency, or private agency or institution which is vested with legal custody of a child shall be appointed guardian of the person except when parental rights have been terminated and the agency or institution has been authorized to place the child for adoption.

(c) In any case arising pursuant to Section 7 (a) (1), the court may also determine as between parents whether the father or the mother shall have legal custody of the child.

Section 42. Court Costs and Expenses.

(a) The following expenses shall be a charge upon the funds of the (   ) upon certification of the same by the court:

(1) the costs of medical and other examinations and treatment of a child ordered by the court;

(2) reasonable compensation for services and related expenses for counsel appointed by the court for the party;

(3) the expenses of service of summons, notices, subpoenas, traveling expenses of witnesses, and other like expenses incurred in the proceedings under this Act; and

(4) reasonable compensation for a guardian ad litem.

(b) If, after due notice to the parents or other persons legally obligated to care for and support the child, and after a hearing, the court finds that they are financially able to pay all or part of the costs and expenses stated in subsection (a) (1) and (a) (2) of this section, the court shall order them to pay the same and may prescribe the manner of payment. Unless otherwise ordered, payment shall be made to the clerk of the (   ) for remittance to those to whom compensation is due, or if costs and expenses have been paid by the (   ), to the appropriate officer of the (   ).

Section 43. Support of Committed Child--Purchase of Care.

(a) Whenever legal custody of a child is vested in someone other than his parents, after due notice to the parents or other persons legally obligated to care for and support the child, and after a hearing the court may order and decree that the parent or other legally obligated person shall pay in such a manner as the court may direct a reasonable sum that will cover in whole or in part the support and treatment of the child after the decree is entered. If the parent or other legally obligated person willfully fails or refuses to pay such sum, the court may proceed against him for contempt, or the order may be filed and shall have the effect of a civil judgment.

(b) When legal custody of a child is vested in the (   ) pursuant to Section 34, the (   ) may purchase care or service from a nongovernmental agency provided that the agency shall submit periodic reports to the ( ) covering the care and treatment the child is receiving and his response to such treatment. These reports shall be made as frequently as the ( ) deems necessary and shall be made with respect to every such child at intervals not exceeding 6 months. The agency shall also afford an opportunity for a representative of the ( ) to examine or consult with the child as frequently as the ( ) deems necessary.

Section 44. Protective Order.

In any proceeding commenced under this Act, on application of a party or the court's own motion, the court may make an order restraining the conduct of any party over whom the court has obtained jurisdiction, if:

(1) an order of disposition of a delinquent or neglected child, or child in need of supervision has been made in a proceeding under this Act; and

(2) the court finds that the person's conduct is or may be detrimental or harmful to the child, and will tend to defeat the execution of the order of disposition made; and

(3) due notice of the application or motion and the grounds therefor and an opportunity to be heard thereon have been given to the person against whom the order is directed.

Section 45. Social and Legal Records--Inspection.

(a) Social, medical and psychological records, including reports of preliminary inquiries, predisposition studies, and supervision records of probationers shall be filed separate from other files and records of the court and shall be open to inspection only by the following:

(1) the judge, probation officers and professional staff of the court;

(2) representatives of a public or private agency, department, or institution providing supervision or having legal custody of the child;

(3) any other person, agency, or institution, by leave of the court, having a legitimate interest in the case or in the work of the court; and

(4) a court and its probation and other professional staff, or an attorney for the defendant for use in considering the sentence to be imposed upon a convicted person, who, prior thereto, had been a party to the proceedings in family court.

(b) All or any part of the records enumerated in subsection (a), or information secured from such records, when presented to and used by the judge in court or otherwise in a proceeding under this Act shall also be made available to the parties to the proceedings and their counsel and representatives.

(c) All other court records, including docket, petitions, motions and other papers filed with a case, transcripts of testimony, findings, verdicts, orders and decrees, shall be open to inspection only by those persons and agencies designated in subsections (a) and (b) of this section.

(d) Whoever, except for the purposes permitted and in the manner provided by this section, discloses or makes use of or knowingly permits the use of information concerning a child before the court directly or indirectly derived from the records of the court or acquired in the course of official duties, upon conviction thereof shall be guilty of a misdemeanor.

Section 46. Law Enforcement Records.

(a) Law enforcement records and files concerning a child shall be kept separate from the records and files of arrests of adults. Unless a charge of delinquency is transferred for criminal prosecution under Section 31, or the interest of national security requires, or the court otherwise orders in the interest of the child, such records and files shall not be open to public inspection nor their contents disclosed to the public.

(b) Inspection of such records and files is permitted by the following:

(1) a family court having the child currently before it in any proceeding;

(2) the officers of public and nongovernmental institutions or agencies to which the child is currently committed, and those responsible for his supervision after release;

(3) any other person, agency, or institution, by order of the court, having a legitimate interest in the case or in the work of the law enforcement agency;

(4) law enforcement officers of other jurisdictions when necessary for the discharge of their current official duties;

(5) a court in which he is convicted of a criminal offense for the purpose of a presentence report or other dispositional proceedings, or by officials of penal institutions and other penal facilities to which he is committed, or by a parole board in considering his parole or discharge or in exercising supervision over him; and

(6) parent, guardian or other custodian and counsel for the child.

(c) Whoever, except as provided by this section, discloses, receives, or makes use of or knowingly permits the use of information concerning a juvenile known to the police, directly or indirectly derived from police reocrds or files or acquired in the course of official duties, upon conviction thereof shall be guilty of a misdemeanor.

Section 47. Children's Fingerprints--Photographs.

(a) Fingerprints of a child 14 or more years of age who is referred to court may be taken and filed by law enforcement officers investigating the commission of a felony. If the court does not find that the child committed the alleged feolony, the fingerprint card and all copies of the fingerprints shall be destroyed.

(b) If latent fingerprints are found during the investigation of an offense and a law enforcement officer has reason to believe that they are those of the child in custody, he may fingerprint the child regardless of age or offense for purposes of immediate comparison with the latent fingerprints. If the comparison is negative, the fingerprint card and other copies of the fingerprints taken shall be immediately destroyed. If the comparison is positive and the child is under 14 years of age and referred to court, the fingerprint card and other copies of the fingerprints shall be delivered to the court for disposition. If the child is not referred to court, the print shall be immediatley destroyed.

(c) If the court finds that a child 14 or more years of age has committed a felony, the prints may be retained in a local file or sent to a central State depository provided that they shall be kept separate from those of adults under special security measures limited to inspection for comparison purposes by law enforcement officers or by staff of the depository only in the investigation of a crime.

(d) A child in custody shall not be photographed for criminal identification purposes without the consent of the judge unless the case is transferred for criminal prosecution.

(e) Any person who willfully violates provisions of this section is guilty of a misdemeanor.

Section 48. Sealing of Records.

(a) On motion on the part of a person who has been the subject of a petition filed under Section 7 (a) (1) of this subsection or on the court's own motion, the court shall vacate its order and findings and order the sealing of the legal and social files and records of the court, probation services, and of any other agency in the case if it finds that:

(1) 2 years have elapsed since the final discharge of the person from legal custody or supervision, or 2 years after the entry of any other court order not involving custody or supervision; and

(2) he has not been convicted of a felony or gross misdemeanor involving moral turpitude, or adjudicated delinquent or in need of supervision prior to the filing of the motion, and no proceeding is pending seeking such conviction or adjudication. The motion and the order may include the files and records specified in Section 46.

(b) Reasonable notice of the motion shall be given to:

(1) the (   ).

(2) the authority granting the discharge if the final discharge was from an institution, parole, or probation, and

(3) the law enforcement officers, department, and central

depository having custody of the files and records if the files and records specified in Section 46 are included in the motion.

(c) Upon the entry of the order, the proceedings in the case shall be treated as if they never occurred, and all index references shall be deleted and the court and law enforcement officers and departments shall reply and the person may reply to any inquiry that no record exists with respect to such person. Copies of the order shall be sent to each agency or official named therein.

Inspection of the files and records included in the order may thereafter be permitted by the court only upon motion by the person who is subject of such records, and only to those persons named in the motion; provided, however, the court in its discretion may be special order in an individual case permit inspection or by release of information in the records to any clinic, hospital, or agency which has the person under care or treatment or to individuals or agencies engaged in fact-finding or research.

(d) Any adjudication of delinquency or in need of supervision or conviction of a crime subsequent to stealing shall have the effect of nullifying the sealing order.

(e) A person who has been the subject of a petition filed under Section 7 (a) (1) shall be notified of his rights under subsection (a) at the time of his final discharge.

Section 49. Continuances.

Continuances shall be granted by the court only upon a showing of good cause and only for so long as is necessary, taking into account not only the request or consent of the (   ) or the child, but also the interest of the public in the prompt disposition of cases.

Section 50. Contempt Powers.

Subject to the laws relating to the procedures therefor and the limitations thereon, the court may punish a person for contempt of court for disobeying an order of the court or for obstructing or interfering with the proceedings of the court or the enforcement of its orders.

Section. 51. Procedure in Adult Cases.

In any proceeding arising under Section 10, the court, with the consent of the defendant, may make a preliminary investigation and such adjustment as is practicable, without prosecution. The procedure and disposition applicable in the trial of such cases in a criminal court shall be applicable to trial in the family court. The (   ) shall prepare and prosecute any case within the purview of Section 10.

Where in his opinion it is necessary to protect the welfare of the persons before the court, the judge, with the consent of the defendant or the parties in interest, may conduct hearings in chambers, and may exclude persons having no direct interest in the case.

Section 52. Additional Remedies Not Pleaded.

When it appears during the course of any hearings or proceeding on delinquency or a person in need of supervision that some finding or remedy other than or in addition to those indicated by the petition or motion appears from the facts to be appropriate, the court may, on motion by the (   ), or that of counsel for the child, amend the petition or motion and, provided all necessary parties consent, proceed to hear and determine forthwith the additional or other issues or findings as though originally properly sought.

Section 54. Rules of Court.

The ( ) shall adopt rules of procedure not in conflict with this Act governing proceedings under this Act.

Section 54. Appeals.

(a) A party, including the State or a subdivision of the State, may appeal from a final order, judgment or decree of the family court to the ( ) by filing written notice of appeal within 30 days, or such further time as the ( ) may grant, after entry of the order, judgment or decree. The appeal shall be heard by the ( ) upon the files, records, and minutes or transcript of the evidence of the family court. The name of the child shall not appear on the record on appeal.

(b) The appeal does not stay the order, judgment or decree appealed from, but the ( ) may otherwise order, on application and hearing consistent with the provisions of this Act, if suitable provision is made for the care and custody of the child. If the order, judgment or decree appealed from grants the custody of the child to, or withholds it from, one or more of the parties to the appeal, the appeal shall be heard at the earliest practicable time. If the ( ) does not dismiss the proceedings and discharge the child, it shall affirm or modify the order of the family court and remand the child to the jurisdiction of the court for disposition, not inconsistent with the ( ) findings on the appeal.

(c) A child who has filed notice of appeal shall be furnished a transcript of the proceedings or as much of it as is requested upon the filing of a motion stating that he is financially unable to purchase the transcript.

Section 55. Laws Repealed.

All laws and portions of laws relating to juvenile or family courts or any other subject dealt with in this Act, which are in conflict with the provisions of this Act, are hereby repealed. The term "juvenile court" as set forth in any existing State statute shall be deemed to mean the family court created hereby.

Section 56. Constitutionality.

If any section, subsection, or clause of this Act shall be held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of the Act.

SUMMARY

Statutory laws, case laws, and model laws have been provided in this report in hopes that Mississippi's juvenile laws can be compared to other juvenile laws. This report includes a handy reference for juvenile laws and provides a limited amount of analysis. A major area not discussed involves the roots of juvenile courts and the historical dilemma caused by the vacilation between the strict procedural mandates of criminal procedings and the more lax dictates which administrative proceedings use. Juvenile court proceedings are a hybrid of both. Therefore, the applicable procedural aspects of each system must be chosen and then conformed to the particular needs of the particular type of juvenile hearing. This conflict is the major problem of juvenile law and procedure. There are no definitive answers to whether hearsay evidence is admissible, whether trial by jury is allowed, whether counsel is allowed or can be appointed, whether Miranda rights are necessary, etc.

The following recommendations stem from a comparison of Mississippi statutes with model statutes, implications of case law and statutes in other states, The recommendations are certainly not inclusive and lack the input of practicing juvenile court personnel. The information in the report and the recommendations do provide a reference point for analyzing Mississippi's juvenile court laws.

RECOMMENDATIONS

1. That the present definition of delinquent child in the Mississippi statutes be divided into two separate definitions and definition of delinquent acts be provided as follows:
   a. Delinquent child means a child who has committed a delinquent act and is in need of care or rehabilitation.
   b. Delinquent Act means an act designated a crime under the law of this state, or of another state if the act occurred in another state, or under Fedreal law. Traffic offenses shall not be deemed delinquent acts except for violations of [set forth the sections of Mississippi statutes which are likely to need the specialized handling of the juvenile court]
   c. Unruly child means a child who:
      (i) while subject to compulsory school attendance is habitually and without justification truant from school;
      (ii) is habitually disobedient of the reasonable and lawful commands of his parent, guardian, or other custodian and is ungovernable; or
      (iii) has committed an offense applicable only to a child; and
      (iv) in any of the foregoing is in need of treatment or rehabilation.
2. The following should be made a part of Section 43-21-17, Mississippi Code Annotated, 1972.
   a. In delinquency and unruly child cases, a child and his

parents, guardian, or custodian shall be advised by the court or its representative that the child shall be represented by counsel at all stages of the prpceedings. If counsel is not retained for the child, or if it does not appear that counsel will be retained counsel shall be appointed for the child.

b. In neglect and battered child cases, the parents, guardian, or custodian shall be informed of their right to be represented by counsel and, upon request, counsel shall be appointed where the parties are unable, for financial reasons, to retain their own, or where, in the court's discretion, appointment of counsel is required in the interest of justice.

3. The following concerning other basic rights should be added as a new section to Mississippi's Youth Court Act.

   a. A party is entitled to the opportunity to introduce evidence and otherwise be heard in his own behalf and to cross examine witnesses.

   b. A child charged with a delinquent act need not be a witness against or otherwise incriminate himself. An extra-judicial statement, if obtained in the course of violation of this act or which would be constitutionally inadmissible in a criminal proceeding, shall not be used against him. Evidence illegally seiged or obtained shall not be received over objection to establish the allegations made against him. A confession validly made by a child out of court is insufficient to support an adjudication of delinquency unless it is corroborated in whole or in part by other evidence.

4. The following concerning fingerprints and photographs should be added as a new section to Mississippi's Youth Court Act.

    a. Fingerprints of a child 14 or more years of age who is referred to court may be taken and filed by law enforcement officers investigating the commission of a felony. If the court does not find that the child committed the alleged felony, the fingerprint card and all copies of the fingerprints shall be destroyed.

    b. If latent fingerprints are found during the investigation of an offense and a law enforcement officer has reason to believe that they are those of the child in custody, he may fingerprint the child regardless of age or offense for purposes of immediate comparison with the latent fingerprints. If the comparison is negative, the fingerprint card and other copies of the fingerprints taken shall be immediately destroyed. If the comparison is positive and the child is under 14 years of age and referred to court, the fingerprint card and other copies of the fingerprints shall be delivered to the court for disposition. If the child is not referred to court, the print shall be immediately destroyed.

    c. If the court finds that a child 14 or more years of age has committed a felony, the prints may be retained in a local file or sent to a central State depository provided that they shall be kept separate from those of adults under special security measures limited to inspection for comparison purposes by law enforcement officers or by staff of the depository only in the investigation of a crime.

d. A child in custody shall not be photographed for criminal identification purposes without the consent of the judge unless the case is transferred for criminal prosecution.

e. Any person who willfully violates provisions of this section is guilty of a misdemeanor.

5. The following concerning sealing of records should be added as a new section to Mississippi's Youth Court Act.

a. On application of a person who has been adjudicated delinquent or unruly or on the court's own motion, and after a hearing, the court shall order the sealing of the files and records in the proceeding, including those specified in Sections 55 and 56, if the court finds:

(i) 2 years have elapsed since the final discharge of the person;

(ii) since the final discharge he has not been convicted of a felony, or of a misdemeanor involving moral trupitude, or adjudicated a delinquent or unruly child and no proceeding is pending seeking conviction or adjudication; and

(iii) he has been rehabilitated.

b. Reasonable notice of the hearing shall be given to:

(1) the prosecuting attorney of the county;

(ii) the authority granting the discharge if the final discharge was from an institution or from parole; and

(iii) the law enforcement officers or department having custody of the files and records if the files and records specified in Sections 55 and 56 are included in the application or motion.

c. Upon the entry of the order the proceeding shall be treated as if it never occurred. All index references shall be deleted and the person, the court, and law enforcement officers and departments shall properly reply that no record exists with respect to the person upon inquiry in any matter. Copies of the order shall be sent to each agency or official therein named. Inspection of the sealed files and records thereafter may be permitted by an order of the court upon petition by the person who is the subject of the records and only by those persons named in the order.

FOOTNOTES

[1] John N. Speca and Floyd A. White, Jr., "Variations and Trends in Proposed Legislation on Juvenile Courts," UMKC Law Review, XL (1971-1972), 130.

[2] Speca and White, p. 131.

[3] Speca and White, p. 131.

[4] "Uniform Juvenile Court Act," Suggested State Legislation, Lexington, Kentucky: Council of State Governments, 1971, p. F-34.

[5] Suggested State Legislation, p. F-37.

[6] Discussion of these cases and resulting requirements are provided on page 58 of this report.

[7] Suggested State Legislation, p. F-34.

[8] Speca and White, p. 134.

[9] The two cases, U.S. v. Robinson and Gustafson v. Florida do not yet have cites.

[10] Kent v. United States, 383 U.S. 1541, In re Gault, 387 U.S. 1, and McKeiver v. Pennsylvania, 403 U.S. 528 indicate that in situations where the juvenile court is adjudicating conduct which, for an adult, would be a criminal act and is disposing of a child adjudicated to be guilty of such conduct, the procedure of the juvenile courts must adhere to the constitutional requirements which characterize a criminal proceeding.

[11] "Opinions Announced December 11, 1973," The United States Law Week, Extra Edition No. 1, Supreme Court Opinions, XLII (December 11, 1973).

[12] See Mississippi Code Annotated, Title 43, Chapter 25, (1972).

[13] See Mississippi Code Annotated § 43-25-1 (1972).

[14] Speca and White, p. 134.

[15] Mississippi Code Annotated (1972).

[16] Cal. Welf. Code (West, 1966).

[17] Fla. Stat. Ann. (1961).

[18] Mo. Ann. Stat. (1962).

[19] N.Y. Judiciary, Family Court Act, (McKinney's Supp. 1972-73).

[20] Pa. Stat. Ann. (Purdon Supp. 1973-74).

[21] See Page 58 of this report.

[22] Speca and White, p. 133.

[23] See In re Creek, 243 A.2d 49, 50 (D.C. Ct. App. 1968); Leach v. State, 428 S.W. 2d 817 (Tex. Ct. Civ. App. 1968); Commonwealth v. Taper, 434 Pa. 71, 253 A. 2d 90 (1969).

[24] West v. United States, 399 F.2d 467 (5th Cir. 1968); see Smith v. Crouse, 413 F. 2d 979 (10th Cir. 1969).

[25] Baldwin v. Lewis, 300 F. Supp. 1220 (E.D. Wis. 1969); In re Marsh, 40 Ill. 2d 53, 237 N.E.2d 529 (1968); State v. Redeman, 485 P. 2d 655 (Ore. Ct. App. 1971).

[26] See Ciulla v. State, 434 S.W.2d 948 (Tex. Ct. Civ. App. 1968); In re Donaldson 75 Cal. Rptr. 200 (1969); In re Marsh, 40 Ill. 2d 53, 237 N.E.2d 529 (1968).

[27] Shone v. Maine, 406 F. 2d 844 (1st Cir. 1966); see Boone v. Danforth, 463 S.W. 2d 825 (Mo. 1971).

[28] RLR v. State, 487 P.2d 27 (Alas. 1971).

[29] Uniform Juvenile Court Act," Suggested State Legislation, Lexington, Kentucky; Council of State Governments, 1971.

[30] United States Children's Bureau, Legislative Guide for Drafting Family and Juvenile Court Acts, Children Bureau Publication number 472, 1969. Prepared by William H. Sheridan.